

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL) MDL No. 2804
5 PRESCRIPTION OPIATE)
6 LITIGATION,) Case No.
7) 1:17-MD-2804
8)
9 THIS DOCUMENT RELATES TO) Hon. Dan A.
10 ALL CASES) Polster
11)
12)
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19 Tuesday, January 22, 2019
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HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

Videotaped 30(b)(6) Deposition of
Walmart, through the testimony of Susanne
Hiland, held at 4206 South J.B. Hunt Drive,
Rogers, Arkansas, commencing at 8:22 a.m., on
the above date, before Debra A. Dibble,
Certified Court Reporter, Registered
Diplomate Reporter, Certified Realtime
Captioner, Certified Realtime Reporter and
Notary Public.

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PROCEEDINGS

(January 22, 2019 at 8:22 a.m.)

THE VIDEOGRAPHER: We are now

on the record. My name is Chris

Ritona. I am the videographer with

Golkow Litigation Services. Today's

date is January 22nd, 2019 and the

time is approximately 8:22 a.m.

This video deposition is being

held in Rogers, Arkansas, at Mitchell

Williams, 4206 South J.B. Hunt Drive,

Suite 200 in the Matter of National

Prescription Opioid Litigation MDL

No. 2804, Case No. 17-MD-2804 in the

United States District Court, Northern

District of Ohio, Eastern Division.

The deponent today is Susanne Hiland.

Will all counsel please identify

themselves for the record.

MR. BOWER: Good morning. Zach

Bower on behalf of MDL and the

plaintiffs.

MR. INNES: Good morning.

Michael Innes on behalf of the

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plaintiffs and the MDL.

MR. FAIRLEY: Carter Fairley

for Cardinal.

MS. BECHET: Jennifer Bechet,

senior associate counsel, Walmart,

Incorporated.

MR. ELMER: Scott Elmer from

Jones Day on behalf of Walmart.

MS. FUMERTON: Tara Fumerton

from Jones Day on behalf of Walmart.

MR. TABACCHI: Tina Tabacchi,

Jones Day on behalf of Walmart.

THE VIDEOGRAPHER: Will all

counsel on the conference call please

also identify themselves.

MS. BALASTER: Mary Balaster,

Reed Smith, on behalf of

AmerisourceBergen Corporation.

MR. WIENER: Seth Wiener,

Arnold & Porter Kaye Scholer, on

behalf of the Endo Par defendants.

MR. ZHOU: Jason Zhou, Jones

Day, on behalf of Walmart.

THE VIDEOGRAPHER: The court

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1 reporter today is Debbie Dibble. And
2 she will please now swear in the
3 witness.
4 SUSANNE HILAND,
5 having first been duly sworn, was examined
6 and testified as follows:
7 DIRECT EXAMINATION
8 BY MR. BOWER:
9 Q. Good morning, Ms. Hiland. How
10 are you today?
11 A. I'm fine, thank you.
12 Q. Have you ever provided sworn
13 testimony on behalf of Walmart in the past?
14 A. I have.
15 Q. Okay. And when was the first
16 time you provided such testimony?
17 A. It would have been sometime in
18 the late '90s.
19 Q. And what was that regarding?
20 A. A workmen's comp case.
21 Q. Was that a deposition?
22 A. Yes, it was.
23 Q. And where was that case
24 located, if you can recall?

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1 A. It would have been somewhere in
2 Central Florida, Lake County, Florida.
3 Q. Do you recall whether it was
4 state court or federal court?
5 A. I don't.
6 Q. Other than that time in the
7 late '90s, have you provided sworn testimony
8 on behalf of Walmart since then?
9 A. Yes.
10 Q. And what was the next time you
11 provided sworn testimony on behalf of
12 Walmart?
13 A. I don't recall the exact date.
14 Q. The approximate date?
15 A. Approximately 2011.
16 Q. And what was that regarding?
17 A. That was regarding a liability
18 case.
19 Q. Do you know what type of
20 liability it was regarding?
21 A. Prescription liability.
22 Q. And do you recall where that
23 case was located?
24 A. That was -- the deposition was

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1 taken in Tallahassee, Florida.
2 Q. Another Florida case?
3 A. Yes.
4 Q. Do you recall whether it was a
5 state or federal case?
6 A. I don't recall.
7 Q. Do you recall who defended
8 Walmart in that case? What law firm?
9 A. I don't recall.
10 Q. Do you recall anything else
11 about that case?
12 A. No.
13 Q. Do you recall were there any
14 prescription drugs at issue in that case?
15 A. Yes, it was a prescription
16 case.
17 Q. Do you know what type of drugs
18 were at issue?
19 A. It was fentanyl.
20 Q. Do you recall what the outcome
21 of the case was?
22 A. I don't recall the outcome.
23 Q. Do you recall what the
24 allegations were against Walmart?

Page 13

1 A. It was a failure to warn.
2 Q. Other than those two instances,
3 have you provided other sworn testimony on
4 behalf of Walmart?
5 A. Yes.
6 Q. When was the last time you
7 provided such testimony?
8 A. I've had several over --
9 probably following that case over the past --
10 well, since that time. I would say maybe
11 somewhere in the range of six to seven other
12 cases.
13 Q. Do you recall what those other
14 cases involved?
15 A. It was either one or two
16 employment cases, and the others were
17 liability cases.
18 Q. Do you recall whether there
19 were any other cases involving claims
20 regarding prescription opioid products?
21 A. None that I recall. I'm
22 certainly aware of no others.
23 Q. So that fentanyl one would be
24 the only one that falls under that category;

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1 is that correct?
2 A. Yes.
3 Q. In any of those instances, were
4 you providing testimony on behalf of Walmart?
5 A. Yes.
6 Q. In other words, that was -- you
7 were providing testimony on behalf of the
8 corporation as you are today; is that
9 correct?
10 A. Correct.
11 Q. Do you recall in what cases you
12 provided that testimony?
13 MS. TABACCHI: Objection, form.
14 THE WITNESS: It would have
15 been all of them except the workmen's
16 comp case.
17 Q. (BY MR. BOWER) So prior to
18 today, you've provided testimony in behalf of
19 Walmart in approximately six to eight cases.
20 Would that be accurate?
21 A. That's accurate, yes.
22 Q. So it seems like you're fairly
23 familiar with the ground rules for a
24 deposition. Would that be accurate?

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1 A. Yes.
2 Q. Okay.
3 And so just to make sure we're
4 all on the same page, I just want to go over
5 a couple of those rules, just so there's no
6 issues moving forward. I think probably the
7 most important one is to make sure that you
8 understand my question. So if at any point
9 you don't understand the question, please
10 just let me know and I'll try to rephrase it.
11 Okay?
12 A. Okay.
13 Q. If you don't ask me to rephrase
14 it, I'll assume that you understand the
15 question as I asked it. Okay?
16 A. Okay.
17 Q. And you understand that your
18 answers today are on behalf of Walmart;
19 correct?
20 A. Yes.
21 Q. And that tomorrow you will be
22 providing your own fact testimony; is that
23 correct?
24 A. Yes.

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1 Q. And do you understand,
2 therefore, that the testimony you will give
3 today can be binding on the corporation?
4 A. Yes.
5 Q. Okay. How long have you been
6 working at Walmart?
7 A. 29 years.
8 Q. And I don't want to spend too
9 much time on your employment history, but can
10 you just -- let's start maybe in 2005, give
11 or take. Going forward. Okay?
12 A. Yes.
13 Q. What was your position in 2005?
14 A. At the start of 2005, I was a
15 regional director for operations. And then I
16 transitioned to a director of professional
17 services.
18 Q. And when would that transition
19 occur?
20 A. March of 2005.
21 Q. Okay.
22 During that time period, did
23 you have oversight over Walmart pharmacies?
24 MS. TABACCHI: Object to the

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1 form.
2 THE WITNESS: In the regional
3 role I had oversight, yes.
4 Q. (BY MR. BOWER) And what about
5 in the director role?
6 A. In the director role, I had
7 responsibilities for Board of Pharmacy
8 issues.
9 Q. What was your next position at
10 Walmart?
11 A. The next position was a
12 promotion to senior director. It was the
13 same department, but we -- the name of the
14 department changed to regulatory affairs.
15 Q. And when did that occur?
16 A. 2009.
17 Q. And just generally what were
18 your duties and responsibilities as the
19 senior director in regulatory affairs? Is
20 that an accurate description of your title at
21 that time?
22 A. That was my title.
23 Q. Okay.
24 And what were your -- just a

Page 18

1 general description of your duties and
 2 responsibilities in connection with that
 3 title.
 4 A. I began to supervise the
 5 directors that had responsibility for Board
 6 of Pharmacy regulation.
 7 I also had responsibility for
 8 our licensing and registration function for
 9 our facilities. And I had federal regulatory
 10 responsibility as it related to our licensed
 11 pharmacies.
 12 MS. TABACCHI: Zach, of course,
 13 you're welcome to inquire about the
 14 witness's personal background, but
 15 this is all beyond the scope of the
 16 notice.
 17 MR. BOWER: I'm just trying to
 18 get, like I said, a very high level.
 19 MS. TABACCHI: I just want to
 20 make sure we're on the same page. I'm
 21 not going to object to every question
 22 during this portion.
 23 MR. BOWER: No, I understand.
 24 I'm just going to move quickly through

Page 19

1 this.
 2 Q. (BY MR. BOWER) And what was
 3 your next role at Walmart after senior
 4 director of regulatory affairs?
 5 A. For a short period of time in
 6 July 2011, I was senior director of
 7 compliance and quality assurance.
 8 Q. So that was in 2011; is that
 9 correct?
 10 A. Yes.
 11 Q. And then your next role after
 12 that was?
 13 A. February 2012 of -- I'll likely
 14 not get the title correct, but it was senior
 15 director of clinical quality assurance.
 16 Q. Okay.
 17 A. And that was the general title.
 18 I'd have to look back to get the title
 19 exactly correct.
 20 Q. Approximately how many titles
 21 would you say you've had at Walmart in your
 22 29 years?
 23 A. One -- a different one every
 24 three years approximately.

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1 Q. What's your current title?
 2 A. My current title -- on paper my
 3 title is Senior Director II, business
 4 strategy. That's an HR title.
 5 In function, my title is senior
 6 director of professional relations,
 7 professional practice standards and clinical
 8 services.
 9 Q. Do you believe you are the
 10 person at Walmart with the most knowledge of
 11 Walmart's maintenance and effective controls
 12 against diversion?
 13 MS. TABACCHI: Object to the
 14 form.
 15 THE WITNESS: I believe that
 16 I'm prepared to speak to that topic on
 17 behalf of Walmart.
 18 MR. BOWER: I move to strike
 19 that answer.
 20 Q. (BY MR. BOWER) I just would
 21 ask you to please carefully listen to my
 22 questions and answer the questions that I
 23 ask. Okay?
 24 A. Yes.

Page 21

1 Q. The question is, do you believe
 2 that you are the person at Walmart with the
 3 most knowledge of Walmart's -- strike that.
 4 Do you believe you are the
 5 person at Walmart with the most knowledge on
 6 Walmart's maintenance of effective controls
 7 against diversion?
 8 MS. TABACCHI: Object to the
 9 form, asked and answered.
 10 THE WITNESS: Yes.
 11 Q. (BY MR. BOWER) How did you
 12 prepare for today's deposition?
 13 A. I interviewed current and
 14 former Walmart associates, I prepared with
 15 counsel, and I reviewed documents.
 16 Q. Okay. Let's take those one at
 17 a time. Get just a little more detail on
 18 that. Which former associates did you speak
 19 with in preparation for today's deposition?
 20 A. I spoke to Scott Culver.
 21 Q. Are there any other former
 22 employees you spoke with in connection with
 23 preparation for today's deposition?
 24 A. No.

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1 Q. What current associates did you
2 speak with in preparation for today's
3 deposition?
4 A. I spoke to Jeff Abernathy,
5 Greg Beam, George Chapman, Dan Dyer, Chad
6 Ducote, Tim Harris, Debbie Hodges,
7 Miranda Johnson, Dena McClamroch, Mike
8 Mullins, Roxy Reed, and Ramona Sullins.
9 Q. Did you speak with all of those
10 folks yourself?
11 A. I spoke with them with counsel
12 present.
13 Q. You were present for all of
14 those conversations?
15 A. Yes.
16 Q. Approximately how much time did
17 you spend speaking with current associates of
18 Walmart in preparation for today's
19 deposition?
20 A. Can you clarify -- in total?
21 Q. Yes, in total.
22 A. Are you asking in total?
23 Q. I'm just looking for a general
24 estimate.

Page 23

1 A. Sure. I would say between
2 eight and ten hours.
3 Q. Approximately how many
4 documents did you review in preparation for
5 today's deposition?
6 A. I reviewed hundreds. I don't
7 know that I could -- the categories were
8 depositions, exhibits, policies, written
9 responses that we've provided in this case.
10 Q. Okay. Can you represent for us
11 that every document you've reviewed has been
12 produced in this case?
13 MS. TABACCHI: I can make that
14 representation.
15 Q. (BY MR. BOWER) And
16 approximately how much time did you spend
17 meeting with counsel in preparation for
18 today's deposition?
19 A. We met on -- by phone or in
20 person. I didn't add up the -- it was on 13
21 different occasions that ranged from
22 90 minutes to 11 hours.
23 Q. Do you recall approximately
24 when the first of those meetings occurred?

Page 24

1 A. Yes. June 28th.
2 Q. Okay. And I see that, as I'm
3 asking my questions, you're referring to some
4 documents in front of you; is that correct?
5 A. Yes.
6 Q. Are you using those documents
7 to refresh your recollection for today's
8 deposition?
9 A. Yes.
10 Q. Is there any objection to
11 including that as an exhibit to today's
12 deposition?
13 MS. TABACCHI: After she's
14 finished using it.
15 MR. BOWER: Yes, yes, after
16 she's done using it. I just don't
17 know if there's going to be any
18 dispute as to what's in there.
19 MS. TABACCHI: We're not going
20 to dispute that.
21 MR. BOWER: Okay. Thank you.
22 (Whereupon, Deposition Exhibit
23 Walmart 1, First Notice of Deposition
24 Pursuant to Rule 30(b)(6) and Document

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1 Request Pursuant to Rule 30(b)(6) and
2 Rule 343 to Wal-Mart Incorporation
3 D/B/A Walmart and Sam's Club, was
4 marked for identification.)
5 (Whereupon, Deposition Exhibit
6 Walmart 2, Second Notice of Deposition
7 Pursuant to Rule 30(b)(6) and Document
8 Request Pursuant to Rule 30(b)(6) and
9 Rule 343 to Wal-Mart Incorporation
10 D/B/A Walmart and Sam's Club, was
11 marked for identification.)
12 Q. (BY MR. BOWER) Handing you
13 what's been marked as Exhibits 1 and 2 for
14 today's deposition, which is just the
15 deposition notices that were issued prior to
16 your first meeting with counsel in June.
17 Do you recognize those
18 documents?
19 A. I do.
20 Q. You've reviewed those documents
21 prior to today?
22 A. Yes.
23 Q. Some of the folks you mentioned
24 speaking with, such as Mr. Abernathy, also

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1 provided depositions in this case. Did you
2 review those depositions in preparation for
3 today's deposition?
4 A. I reviewed depositions.
5 Q. Did you --
6 A. I --
7 Q. I don't want to cut you off.
8 If not, please finish.
9 A. I was finished.
10 Q. Did you review Mr. Abernathy's
11 deposition?
12 A. Yes.
13 Q. Did you review Mr. Ducote's
14 deposition?
15 A. Yes.
16 Q. Did you review Ms. Hodges'
17 deposition?
18 A. Yes.
19 Q. Did you review Ms. Johnson's
20 deposition?
21 A. Yes.
22 Q. Did you review Ms. Reed's
23 deposition?
24 A. Yes.

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1 Q. When did you first review a
2 deposition transcript in this case in
3 preparation for today's deposition?
4 A. It would have been -- if I
5 recall correctly, it would have been in -- it
6 was in December.
7 Q. Were you reviewing the
8 deposition transcripts kind of after they
9 were happening or did you wait until a
10 certain time to prepare for today's
11 deposition?
12 MS. TABACCHI: Object to the
13 form.
14 THE WITNESS: I reviewed the
15 transcripts as they were made
16 available.
17 Q. (BY MR. BOWER) Do you believe
18 you are the person at Walmart most
19 knowledgeable regarding Walmart's suspicious
20 order monitoring program for controlled
21 substances?
22 A. Yes.
23 MS. TABACCHI: Object to the
24 form.

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1 Q. (BY MR. BOWER) Do you believe
2 you were the person at Walmart with the most
3 knowledge on Walmart's policies and
4 procedures related to due diligence following
5 the detection of a suspicious order?
6 MS. TABACCHI: Object to the
7 form.
8 THE WITNESS: Yes.
9 Q. (BY MR. BOWER) Do you believe
10 you are the person at Walmart most
11 knowledgeable regarding the policies and
12 procedures and standards at Walmart used to
13 set and also thresholds for detecting orders
14 of interest?
15 MS. TABACCHI: Object to the
16 form.
17 THE WITNESS: Yes.
18 MS. TABACCHI: I also object to
19 that as restating the topics. So to
20 the extent that you're rephrasing the
21 topics that are either in the notice
22 or that we've agreed to, I will object
23 to those questions.
24 Q. (BY MR. BOWER) Are you

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1 familiar with the Controlled Substances Act?
2 A. Yes.
3 Q. And more specifically, are you
4 familiar with how the Controlled Substances
5 Act regulates distributors of controlled
6 substances?
7 MS. TABACCHI: Object to the
8 form. Calls for a legal conclusion,
9 beyond the scope of the notice.
10 THE WITNESS: I'm aware that
11 there are obligations within the
12 Controlled Substances Act for
13 distributors.
14 Q. (BY MR. BOWER) Are you aware,
15 for example, that Walmart must be registered
16 in order to distribute controlled substances;
17 is that correct?
18 A. Yes. Walmart's DCs are
19 registered for the Controlled Substances Act.
20 We're registered.
21 Q. Thank you for that
22 clarification.
23 And, in fact, Walmart DCs -- by
24 "DCs," you mean distribution centers;

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1 correct?
2 A. Yes.
3 Q. And in fact, Walmart
4 distribution centers were required to be
5 registered in order to distribute controlled
6 substances; is that an accurate statement?
7 A. Yes. That's my understanding.
8 Q. And in connection with that
9 requirement, those distribution centers were
10 obligated to institute suspicious order
11 monitoring programs for controlled
12 substances. Would you agree with that?
13 MS. TABACCHI: Object to the
14 form. Calls for a legal conclusion,
15 beyond the scope.
16 THE WITNESS: As a registrant,
17 we're required to implement systems to
18 detect orders and prevent diversion.
19 MS. TABACCHI: I'm sorry to
20 interrupt, but if someone has joined
21 the call, can we please get their
22 appearance for the record.
23 (Discussion off the record.)
24 Q. (BY MR. BOWER) I'm just trying

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1 to get an understanding as to whether Walmart
2 acknowledges that, as a distributor of
3 controlled substances, it must be registered
4 with the DEA. Do you agree with that?
5 MS. TABACCHI: Object to the
6 form. Asked and answered. Calls for
7 a legal conclusion and beyond the
8 scope of the notice.
9 THE WITNESS: Yes.
10 Q. (BY MR. BOWER) And would you
11 agree that, in order to maintain that
12 license, that registration, and in order to
13 maintain its ability to distribute controlled
14 substances, Walmart was obligated to
15 implement a program to monitor for the orders
16 of controlled substances.
17 Would you agree with that?
18 MS. TABACCHI: Object to the
19 form. Calls for a legal conclusion,
20 beyond the scope of the notice.
21 THE WITNESS: I'm aware that
22 there are requirements to implement
23 programs to alert us, the registrant,
24 of suspicious orders and investigate

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1 those orders.
2 Q. (BY MR. BOWER) And when you
3 say "I'm aware," you're speaking on behalf of
4 Walmart; correct?
5 A. Yes.
6 Q. So every time today when you
7 say "I'm," you are referring to you, you're
8 speaking on behalf of Walmart. That's your
9 understanding; correct?
10 MS. TABACCHI: I object to that
11 question. The -- we will take those
12 questions as they come. And there
13 will be times when you ask a question
14 that is not calling for an answer that
15 is on behalf of the corporation, so
16 we're not going to agree to a blanket
17 assertion that every question is on
18 behalf of the corporation.
19 Q. (BY MR. BOWER) Do you
20 understand that your answers today are on
21 behalf of the corporation?
22 MS. TABACCHI: To the extent
23 that they are within the scope of the
24 notice and our agreements.

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1 MR. BOWER: Look. I've let the
2 speaking objections go a little bit.
3 I would ask that you, so we don't take
4 time off the record the whole day,
5 just object to form and that way you
6 can sort it out later. But every
7 objection so far has been a lengthy
8 statement. I would ask if we could
9 save some time, just object to form so
10 we can move on.
11 MS. TABACCHI: I'll disagree.
12 I'll make my objections as
13 appropriate.
14 Q. (BY MR. BOWER) Do you
15 understand that your testimony today is on
16 behalf of the corporation?
17 A. Yes.
18 Q. And in your previous answer,
19 you referred to "I." Were you speaking on
20 behalf of yourself or the corporation when
21 you provided that answer?
22 MS. TABACCHI: Can you please
23 restate the question that you're
24 asking about?

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1 Q. (BY MR. BOWER) Can you answer
2 that question?
3 A. Can you restate the question?
4 Q. I'll move on.
5 Do you agree that Walmart must
6 be proactive in designing a system to prevent
7 diversion?
8 MS. TABACCHI: Object to the
9 form, beyond the scope. Calls for a
10 legal conclusion.
11 THE WITNESS: I believe that we
12 have policies in place to detect and
13 prevent diversion. I believe that's
14 an obligation that we have.
15 Q. (BY MR. BOWER) And do you agree
16 that Walmart must be proactive in preventing
17 diversion?
18 MS. TABACCHI: Same objections.
19 Object to the form.
20 THE WITNESS: Yes, I believe
21 our policies and procedures were in
22 place to be proactive and prevent
23 diversion.
24 Q. (BY MR. BOWER) Do you know how

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1 long the Controlled Substances Act has been
2 in place?
3 MS. TABACCHI: Beyond the scope
4 of the notice.
5 THE WITNESS: If I recall,
6 1970.
7 Q. (BY MR. BOWER) So Walmart is
8 aware that, going back to 1970, it had a --
9 to the extent it was distributing controlled
10 substances, it had an obligation to monitor
11 orders for those substances.
12 Would you agree with that?
13 MS. TABACCHI: Object to the
14 form. Beyond the scope of the notice.
15 Calls for a legal conclusion.
16 THE WITNESS: The regulations
17 would apply during the time period
18 that we were distributing controlled
19 substances as a registrant.
20 Q. (BY MR. BOWER) Thank you
21 When did Walmart first begin
22 distributing controlled substances?
23 A. Walmart pharmacies first
24 started in 1978. We were not

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1 self-distributing at that time.
2 Q. Okay. When did Walmart first
3 become self-distributing?
4 MS. TABACCHI: Beyond the
5 scope.
6 THE WITNESS: Can you narrow
7 the -- are you asking about which
8 controlled substances?
9 Q. (BY MR. BOWER) Any controlled
10 substances?
11 MS. TABACCHI: Beyond the
12 scope.
13 THE WITNESS: To my knowledge,
14 it was in the mid-'80s.
15 Q. (BY MR. BOWER) Is it a true
16 statement that Walmart was distributing
17 controlled substances at least as of 1996?
18 MS. TABACCHI: Object to the
19 form. Beyond the scope.
20 THE WITNESS: Yes.
21 Q. (BY MR. BOWER) And would you
22 agree that in 1996, Walmart had programs in
23 place to monitor for orders -- to monitor for
24 suspicious orders of controlled substances?

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1 MS. TABACCHI: Object to the
2 form. Beyond the scope.
3 THE WITNESS: Can you restate
4 the question?
5 Q. (BY MR. BOWER) Sure. Did
6 Walmart have programs in place in 1996 to
7 monitor for orders of prescription -- of
8 controlled substances?
9 MS. TABACCHI: Object to the
10 form. Beyond the scope.
11 If you want to contain your
12 questions to the drugs that are at
13 issue in this case, I think we'll have
14 a better time of this. There is an
15 agreed-upon list for Schedule II
16 opioids.
17 Q. (BY MR. BOWER) You can answer.
18 A. We were not self-distributing
19 opioids in that time frame.
20 Q. And so that wasn't my question.
21 I understand you listened to your counsel's
22 objection, and I would ask you not to do
23 that. Just answer the question that I ask.
24 The question is, did Walmart

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1 have programs in place in 1996 to monitor for
 2 orders of controlled substances?
 3 MS. TABACCHI: Object to the
 4 form. Beyond the scope of the notice.
 5 Calls for a legal conclusion.
 6 THE WITNESS: Our distribution
 7 centers would have had policies and
 8 procedures in place.
 9 Q. (BY MR. BOWER) Would they have
 10 had written policies and procedures in place?
 11 MS. TABACCHI: Same objections.
 12 THE WITNESS: Not necessarily.
 13 Q. (BY MR. BOWER) What's the
 14 basis for your statement that policies and
 15 procedures were in place at distribution
 16 centers?
 17 MS. TABACCHI: Object to the
 18 form. What time period?
 19 MR. BOWER: 1996.
 20 MS. TABACCHI: Beyond the
 21 scope.
 22 THE WITNESS: The -- the
 23 operation of the distribution centers
 24 followed policies and procedures that

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1 the -- a -- the general operation had
 2 policies and procedures in place.
 3 Q. (BY MR. BOWER) What's the
 4 basis for your statement that Walmart
 5 distribution centers had policies and
 6 procedures in place in 1996 to monitor for
 7 orders of controlled substances?
 8 MS. TABACCHI: Same objections.
 9 THE WITNESS: I don't believe I
 10 testified specifically to order
 11 monitoring at that point in time.
 12 Q. (BY MR. BOWER) Okay. So let
 13 me just ask it again, then.
 14 Did Walmart have policies and
 15 procedures in place in 1996 to monitor orders
 16 for controlled substances?
 17 MS. TABACCHI: Object to the
 18 form. Beyond the scope of the notice.
 19 THE WITNESS: That time period
 20 is not a time period that I prepared
 21 for, and so I'm -- I don't have that
 22 information today to share.
 23 Q. (BY MR. BOWER) Okay. Thank
 24 you for that answer.

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1 What information -- what time
 2 period did you prepare for to answer that
 3 question?
 4 A. The time period that was within
 5 the scope of the notice.
 6 Q. And do you recall what time
 7 period it was?
 8 A. I believe it was in the 2006
 9 range. There were different time periods.
 10 Q. Well, if you'd turn to
 11 Exhibit 1, for example, and you turn to
 12 page 5, do you see the relevant time period
 13 on the bottom of page 5? As defined?
 14 A. I do.
 15 Q. Okay. So when your answer
 16 referred to the notice, do you see the notice
 17 asked for testimony from 1995 to the present?
 18 A. I do.
 19 Q. And as you sit here today,
 20 you're prepared to answer questions from 2006
 21 to the present; is that correct?
 22 MS. TABACCHI: We have asserted
 23 an objection to the relevant time
 24 period, as you know.

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1 THE WITNESS: Could you please
 2 restate the question?
 3 Q. (BY MR. BOWER) And as you sit
 4 here today, you're only prepared to testify
 5 and answer questions from the time period of
 6 2006 to the present; is that correct?
 7 MS. TABACCHI: Per our
 8 objection, and previous discussions.
 9 Q. (BY MR. BOWER) Well, I
 10 understand you've raised an objection, but
 11 there was no previous discussions or
 12 agreements to that time period. So I'm just
 13 trying to understand what you are prepared
 14 today to testify to. And the question is, am
 15 I correct that you're only prepared to
 16 testify today from the time period 2006 to
 17 the present?
 18 MS. FUMERTON: I'd just like to
 19 add that this did go before Special
 20 Master Cohen, our letter dated
 21 August 31st, stating what the relevant
 22 time period would be, and the
 23 plaintiffs at that point in time did
 24 not raise any issue, and Special

<p style="text-align: right;">Page 42</p> <p>1 Master Cohen did issue at that point 2 in time. 3 So I don't think it's accurate 4 for you to say that there has not been 5 a sort of agreement or decision 6 reached on this issue. 7 Moreover, Federal Rule 2 and 3 8 also talk about what the relevant time 9 period is in this case. 10 MR. BOWER: Do you need the 11 question read back to you? 12 THE WITNESS: Yes, please. 13 Q. (BY MR. BOWER) Okay. 14 And I'll just rephrase it. I'm 15 just trying to understand what you prepared 16 for today. Okay? 17 A. Yes. 18 Q. I don't think it's complicated. 19 I don't think we need all of those 20 objections. I'm just trying to find out what 21 you have in fact prepared for today. 22 Is it a fair statement that 23 you've prepared to testify today with respect 24 to the time period 2006 to the present?</p>	<p style="text-align: right;">Page 44</p> <p>1 form. Asked and answered. 2 THE WITNESS: He came to the 3 office in person and met with me. 4 Q. (BY MR. BOWER) Oh, you visited 5 with him in person? 6 A. Yes. 7 Q. Do you know where Scott 8 currently resides? 9 A. Somewhere in Northwest 10 Arkansas. 11 Q. And Mr. Culver has knowledge on 12 Walmart's policies and procedures from 13 monitoring orders of controlled substances in 14 Walmart DCs prior to 2006; is that correct? 15 A. If I can refer to his -- 16 Q. Sure. 17 A. -- time period. 18 Yes. 19 Q. And what were Walmart's 20 policies and procedures for monitoring orders 21 of controlled substances that Mr. Culver 22 conveyed to you? 23 A. The information that he 24 provided to me related to the interactions</p>
<p style="text-align: right;">Page 43</p> <p>1 A. Yes. However, I did speak to 2 Scott Culver who was in charge of our 3 distribution centers dating back into the 4 '90s. And Scott represented to me that there 5 were policies and procedures in place around 6 the security and monitoring of orders -- 7 Q. Okay. 8 A. -- at the distribution centers 9 that many years ago. 10 Q. Okay. And were those policies 11 he referred to written policies? 12 MS. TABACCHI: Object to the 13 form. 14 THE WITNESS: He described to 15 me the processes and the interactions 16 that they would have based on 17 reviewing orders. But there were no 18 policies that we could locate. 19 Q. (BY MR. BOWER) Okay. And how 20 did you get in touch with Mr. Culver? 21 A. Through counsel. 22 Q. Okay. Did you call him or did 23 he call you? 24 MS. TABACCHI: Object to the</p>	<p style="text-align: right;">Page 45</p> <p>1 that his associates would have with DEA 2 providing reporting, working collaboratively 3 with the DEA and the process that the 4 associates went through to understand orders 5 that were outlier orders as they processed 6 orders through the distribution center. 7 Q. And what was the process that 8 the associates went through to understand the 9 orders that were outliers? 10 A. Much of it was 11 experience-based. There were very tenured 12 associates, and their jobs were 13 specifically -- they were specifically 14 assigned to the controlled substance 15 processing areas. And so they were very 16 familiar with practices and what might be out 17 of the ordinary. 18 Q. What specifically would they 19 look for? 20 A. They would be looking for 21 orders that were of an unusual size. They 22 would be monitoring for any type of an order 23 that was requested outside of a normal 24 ordering schedule that Walmart had</p>

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1 established. And those were the -- those
 2 were the things that they were looking for.
 3 Q. What do you mean by "normal
 4 ordering schedule that Walmart had
 5 established"?
 6 A. So for Walmart, the way that
 7 our distribution was set up, every pharmacy
 8 only received an order once a week. And so
 9 that was the schedule. It was -- it was a
 10 certain set of stores that would order four
 11 days out -- one day of the week, but we only
 12 distributed four days out of the week. And
 13 so they could see also if there were manual
 14 orders coming in or requests for some
 15 different order schedule.
 16 Q. So they were, for example,
 17 looking at as to whether a store ordered more
 18 than once a week? Is that correct?
 19 A. What they would look for is --
 20 there was a process for a store to order
 21 outside of their normal pattern, so they
 22 would be looking for those. And then
 23 understanding why they needed it outside of
 24 that normal day.

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1 Q. And what would they look for
 2 with respect to normal pattern?
 3 A. That -- so that would be one of
 4 the patterns that they would look for, was
 5 order pattern, was it outside of the cycle.
 6 The other thing that they would do is reach
 7 out to stores and have conversations about
 8 the needs if they noticed there was something
 9 out of the ordinary.
 10 Q. And this was occurring as of
 11 1996. Is that your understanding?
 12 A. My understanding was that there
 13 were -- there were processes in place before
 14 we distributed C-IIs, and that started in
 15 2002. So that when the DC was opened in
 16 2002, there had been a lot of conversations
 17 with the DEA prior to that, around current
 18 processes, what needed to carry over and how
 19 to open that building.
 20 Q. Is it your testimony that
 21 Walmart did not distribute C-IIs prior to
 22 2002?
 23 A. We did not self-distribute
 24 C-IIs prior to that time.

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1 Q. Okay. And I just want to make
 2 sure that the record is clear. And my
 3 question was limited to self-distribution.
 4 And I understand there may be no difference,
 5 but I just wanted to make sure that I'm
 6 crystal clear as to whether that question was
 7 provided an answer. So let me ask it again.
 8 Did Walmart distribute C-II
 9 products prior to 2002?
 10 MS. TABACCHI: Beyond the
 11 scope.
 12 THE WITNESS: No.
 13 Q. (BY MR. BOWER) Did Walmart
 14 distribute hydrocodone prior to 2002?
 15 MS. TABACCHI: Beyond the
 16 scope.
 17 THE WITNESS: Yes.
 18 Q. (BY MR. BOWER) Previously you
 19 referenced interactions of associates with
 20 the DEA. Do you recall that testimony?
 21 A. Yes.
 22 Q. Okay. Do you recall any more
 23 specificity regarding which associates
 24 interacted with the DEA?

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1 MS. TABACCHI: Object to the
 2 form.
 3 THE WITNESS: In -- can you
 4 specify a time frame?
 5 Q. (BY MR. BOWER) Sure. Prior to
 6 2006.
 7 A. Those interactions would be
 8 with Scott Culver. Scott relayed that he
 9 interacted with the DEA prior to 2006 in his
 10 role.
 11 Q. Did Mr. Culver convey to you
 12 that he relied on those interactions with the
 13 DEA in determining what policy would be used
 14 to monitor for orders of controlled
 15 substances?
 16 MS. TABACCHI: Object to the
 17 form. Beyond the scope.
 18 You may answer.
 19 THE WITNESS: What he conveyed
 20 to me was that he worked interactively
 21 with the DEA around requirements and
 22 understanding what their expectations
 23 were that ranged from physical
 24 security of the buildings, the

<p style="text-align: right;">Page 50</p> <p>1 shipping mechanisms to ensure safe 2 transport, as well as any reporting or 3 processes that the associates were 4 conducting as they were order 5 monitoring. 6 Q. (BY MR. BOWER) And how many 7 associates during this time period that you 8 covered with Mr. Culver were -- had the 9 responsibility to review orders of controlled 10 substances? 11 MS. TABACCHI: Object to the 12 form. Beyond the scope. 13 THE WITNESS: There would be a 14 number of associates in the 15 distribution center, depending on the 16 distribution center. But it would be 17 limited to the management of those 18 distribution centers. 19 Q. (BY MR. BOWER) Well, 20 approximately how many associates in each 21 distribution center would have that 22 responsibility? 23 MS. TABACCHI: Object to the 24 form. Beyond the scope.</p>	<p style="text-align: right;">Page 52</p> <p>1 for unusual orders of unusual size as the 2 orders were being processed. 3 Q. And how would they determine 4 whether an order was of unusual size? 5 A. These were -- 6 MS. TABACCHI: Beyond the 7 scope. 8 THE WITNESS: These were 9 long-tenured associates that 10 understood the business and the fact 11 that we were self-distributing. So 12 they saw the -- they saw the patterns. 13 They worked with it every single day. 14 Q. (BY MR. BOWER) They were using 15 their memory? Is that correct? 16 MS. TABACCHI: Object to the 17 form. 18 THE WITNESS: They were using 19 their experience. 20 Q. (BY MR. BOWER) Were they using 21 any written information to make those 22 judgments? 23 MS. TABACCHI: Object to the 24 form. Beyond the scope.</p>
<p style="text-align: right;">Page 51</p> <p>1 THE WITNESS: As the orders 2 were coming in to the -- so 3 specifically to the C-II facility, the 4 order team was reviewing the size of 5 those orders, and they would raise 6 those up if there was some -- 7 something that they spotted. So there 8 was a team of order reviewers, but 9 the -- the management that was in the 10 building would have been limited to a 11 handful of managers, possibly two or 12 three in any building. 13 Q. (BY MR. BOWER) I just want to 14 make sure that we're all on the same page. 15 What time period was that answer regarding? 16 Because you mentioned C-IIs. Was that post 17 2002, your answer? 18 A. That would be correct. 19 Q. Okay. So in your answer, you 20 stated reviewing the size of those orders, 21 and they would raise those up with some -- 22 something that they spotted. What does that 23 mean? 24 A. That means they were looking</p>	<p style="text-align: right;">Page 53</p> <p>1 THE WITNESS: Those were just 2 to alert -- to alert the management 3 that there might be something more 4 that needed to be looked into, which 5 would then be passed to the 6 management. 7 Q. (BY MR. BOWER) Okay. Well, I 8 want to talk about passing to the management 9 in a moment, but I'm just trying to figure 10 out this alert step. And to just go back to 11 my question, my prior question. 12 The associates were reviewing 13 orders in the 2002-2003 time period for 14 C-IIs. Were they using any written 15 information in connection with those reviews? 16 MS. TABACCHI: Beyond the 17 scope. 18 THE WITNESS: They were looking 19 at orders that were coming in. 20 Those -- those orders were in a 21 system, and beyond -- they -- beyond 22 that, as they were reviewing the 23 orders, that was the process. 24 Q. (BY MR. BOWER) So other than</p>

<p style="text-align: right;">Page 54</p> <p>1 reviewing the actual order itself, was there 2 any other information they would consider? 3 MS. TABACCHI: Beyond the 4 scope. Object to the form. 5 THE WITNESS: Not in that 6 specific step. 7 Q. (BY MR. BOWER) And during this 8 time period, approximately how many 9 pharmacies did Walmart have? 10 MS. TABACCHI: Object to the 11 form, beyond the scope. 12 THE WITNESS: We have store 13 number counts. I don't have that 14 number in front of me today. 15 Q. (BY MR. BOWER) Would you be 16 surprised at this time period there was 3- to 17 4,000 pharmacies in the U.S. for Walmart? 18 MS. TABACCHI: Object to the 19 form, beyond the scope. 20 THE WITNESS: No, that would 21 not surprise me. 22 Q. (BY MR. BOWER) And it's your 23 testimony today that these associates at 24 DC 6045 would review orders for each of those</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Yes. 2 A. I think experience takes in a 3 lot of different factors that includes 4 judgment. 5 Q. And did these folks who were 6 reviewing orders for controlled substances 7 during the 2002-2003 time period receive 8 training in connection with what they were 9 looking for? 10 MS. TABACCHI: Object to the 11 form, beyond the scope. 12 THE WITNESS: The associates 13 were trained in their roles in the 14 distribution center. 15 Q. (BY MR. BOWER) But did -- my 16 question is a little more focused than that. 17 I'm just trying to get at whether they 18 received any training specific to their roles 19 for monitoring orders of controlled 20 substances. 21 MS. TABACCHI: Same objections. 22 THE WITNESS: In my 23 conversations with Scott Culver, and 24 confirmed by Mike Mullins, the</p>
<p style="text-align: right;">Page 55</p> <p>1 pharmacies and use their memory to determine 2 whether an order was for unusual size? 3 MS. TABACCHI: Object to the 4 form, beyond the scope, misstates 5 testimony. 6 THE WITNESS: Not all stores 7 ordered every week. Not all stores 8 ordered every day. And that was not 9 the only step that was being 10 performed. 11 Q. (BY MR. BOWER) Well, other than 12 their experience, which is -- is experience 13 in your testimony any different than their 14 memory? 15 MS. TABACCHI: Object to the 16 form. 17 THE WITNESS: Yes, I think so. 18 Q. (BY MR. BOWER) And how is it 19 different? 20 MS. TABACCHI: Same objection. 21 THE WITNESS: In my personal 22 opinion? 23 Q. (BY MR. BOWER) Yes. 24 A. Is that what you're asking?</p>	<p style="text-align: right;">Page 57</p> <p>1 associates were trained in their 2 roles, and they understood the fact 3 that they were in a controlled 4 substances facility and the gravity of 5 the products that they were shipping. 6 Q. (BY MR. BOWER) So even during 7 this time period, Walmart was aware of the 8 gravity of the products that were being 9 shipped; right? 10 MS. TABACCHI: Object to the 11 form. Beyond the scope. 12 THE WITNESS: Yes, we 13 understood that we were shipping 14 controlled substances that were 15 regulated. 16 Q. (BY MR. BOWER) And those 17 controlled substances were regulated because 18 they were highly addictive. Would you agree 19 with that? 20 MS. TABACCHI: Object to the 21 form, beyond the scope. 22 THE WITNESS: They're scheduled 23 because they do have the potential for 24 addictive properties, yes.</p>

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1 Q. (BY MR. BOWER) Well, other
2 than them being scheduled as controlled IIs,
3 did Walmart understand that these products
4 that it was distributing had the potential to
5 be deadly?
6 MS. TABACCHI: Object to the
7 form. This is beyond the scope of the
8 notice.
9 You may ask the witness in her
10 individual capacity. This is beyond
11 the scope of the notice.
12 MR. BOWER: You can answer.
13 THE WITNESS: We understand the
14 highly regulated nature of the C-IIs
15 and the addictive potential behind
16 those products.
17 Q. (BY MR. BOWER) And earlier you
18 mentioned you testified in a case regarding
19 fentanyl; is that correct?
20 A. Yes.
21 Q. Was a person harmed as a result
22 of use of fentanyl?
23 MS. TABACCHI: Object to the
24 form. Beyond the scope.

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1 THE WITNESS: Yes.
2 Q. (BY MR. BOWER) And that person
3 received the fentanyl from a Walmart
4 pharmacy?
5 MS. TABACCHI: Same objection.
6 THE WITNESS: Our pharmacy
7 filled the prescription according to
8 the -- there was no error on the part
9 of Walmart in the way that the
10 prescription was filled or dispensed.
11 Q. (BY MR. BOWER) And I
12 understand that you're defending Walmart
13 here, and I'm not trying to phrase my answer
14 in any -- my question in any particular way.
15 I'm just trying to understand whether that
16 fentanyl was provided to the person who sued
17 Walmart by a Walmart pharmacy.
18 MS. TABACCHI: Object to the
19 form. Beyond the scope.
20 THE WITNESS: Yes.
21 Q. (BY MR. BOWER) Do you know
22 what happened to that person who bought that
23 fentanyl?
24 MS. TABACCHI: Same objections.

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1 THE WITNESS: Yes, she died.
2 Q. (BY MR. BOWER) And when was
3 that case, approximately?
4 MS. TABACCHI: Same objections.
5 THE WITNESS: The deposition
6 was approximately in 2011. So the
7 case would likely have been a couple
8 of years before that. I don't know
9 exactly.
10 Q. (BY MR. BOWER) So Walmart
11 would have been on notice at least with
12 respect to when that case was filed that
13 fentanyl could be deadly; is that accurate?
14 MS. TABACCHI: Object to the
15 form, beyond the scope of the notice.
16 THE WITNESS: We understand the
17 nature and the potential of the drugs.
18 In this case the drug wasn't used as
19 it was prescribed.
20 Q. (BY MR. BOWER) And what's your
21 basis for the statement "The drug wasn't used
22 as it was prescribed"?
23 MS. TABACCHI: Beyond the
24 scope.

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1 THE WITNESS: My recall of the
2 case was that the fentanyl was
3 dispensed and intended to be used
4 immediately, and the patient waited
5 and didn't use it. And then at some
6 point later was opioid naive and
7 decided to use the patch.
8 Q. (BY MR. BOWER) And what do you
9 mean by "opioid naive"?
10 MS. TABACCHI: Beyond the
11 scope.
12 THE WITNESS: Didn't have a
13 previous history of taking opioids.
14 Q. (BY MR. BOWER) Are patients
15 who don't have a previous history of taking
16 opioids all opioid naive?
17 MS. TABACCHI: Object to the
18 form, beyond the scope.
19 THE WITNESS: In -- the way
20 that I think about use of opioids is
21 based on prior use. And there's -- I
22 know that there's a formula that can
23 be used to determine whether or not a
24 patient, a person has taken enough

<p style="text-align: right;">Page 62</p> <p>1 opioids and not be considered opioid 2 naive. 3 Q. (BY MR. BOWER) And what 4 formula are you referring to? 5 MS. TABACCHI: Beyond the 6 scope. 7 THE WITNESS: I've looked at 8 different resources to -- I don't 9 recall if it was CDC or another 10 resource that provided dosing around 11 opioid-naive patients. 12 Q. (BY MR. BOWER) When did you 13 look at those different resources? Do you 14 recall the first time you looked at them? 15 MS. TABACCHI: Object to the 16 form. Beyond the scope. 17 THE WITNESS: As a pharmacist, 18 I've looked at them over the years. 19 Q. (BY MR. BOWER) Okay. As a 20 pharmacist, have you kept up-to-date with the 21 CDC website regarding opioid use? 22 MS. TABACCHI: Object to the 23 form. Beyond the scope. 24 THE WITNESS: I believe I have.</p>	<p style="text-align: right;">Page 64</p> <p>1 (End of readback.) 2 MS. TABACCHI: Object to the 3 form. Beyond the scope. 4 THE WITNESS: Our order 5 monitoring policies are designed to 6 help detect and prevent diversion from 7 appropriate medical use. 8 Q. (BY MR. BOWER) And in adding 9 those order monitoring policies, did Walmart 10 consider the harm that would result from 11 potential diversion? 12 MS. TABACCHI: Object to the 13 form. Beyond the scope. 14 THE WITNESS: I believe we take 15 our responsibilities seriously around 16 preventing diversion, and the reason 17 to prevent diversion would be so that 18 there isn't -- to prevent harm. 19 Q. (BY MR. BOWER) Does Walmart 20 agree that an increase in diversion could 21 lead to an increase in harm to the public? 22 MS. TABACCHI: Object to the 23 form. And beyond the scope. 24 THE WITNESS: Can you repeat</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. (BY MR. BOWER) Has Walmart kept 2 up with the CDC website regarding opioid 3 abuse? 4 MS. TABACCHI: Object to form. 5 This is beyond the scope of the 6 notice. 7 THE WITNESS: I believe we 8 have. 9 Q. (BY MR. BOWER) Did Walmart in 10 designing its suspicious order monitoring 11 policies for Controlled-II consider the 12 public harm that could arise from abuse of 13 opioids? 14 MS. TABACCHI: Object to the 15 form. Can you please repeat the 16 question. 17 (Whereupon, the following 18 testimony was read by the court 19 reporter.) 20 "QUESTION: Did Walmart in 21 designing its suspicious order 22 monitoring policies for Controlled-II 23 consider the public harm that could 24 arise from abuse of opioids?"</p>	<p style="text-align: right;">Page 65</p> <p>1 the question? 2 Q. (BY MR. BOWER) And I should 3 have not paused. It's my fault. 4 Does Walmart agree that an 5 increase in diversion could be -- strike 6 that. I won't read it from that. I'll read 7 it from here. 8 Does Walmart agree that an 9 increase in diversion could lead to an 10 increase in harm to the public? 11 MS. TABACCHI: Object to the 12 form. Beyond the scope. 13 THE WITNESS: We -- I don't 14 think that we could know the purpose 15 for someone diverting. If it's not 16 for appropriate use, it would result 17 in harm. 18 Q. (BY MR. BOWER) Do you 19 understand that the Controlled Substances Act 20 provides for a closed system of distribution 21 for controlled substances? 22 MS. TABACCHI: Object to the 23 form. Calls for a legal conclusion. 24 Beyond the scope.</p>

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1 THE WITNESS: I don't think I
2 understand the question.
3 Q. (BY MR. BOWER) Okay. I'm
4 going to rephrase.
5 Does Walmart acknowledge that
6 one of the goals of the Controlled Substances
7 Act is to provide for a closed system of
8 distribution for controlled substances?
9 MS. TABACCHI: Same objections.
10 THE WITNESS: I don't know that
11 I've -- I understand the closed
12 distribution system within the
13 Controlled Substances Act.
14 Walmart has a closed
15 distribution system.
16 Q. (BY MR. BOWER) What do you
17 mean when you say "Walmart has a closed
18 distribution system"?
19 A. We only self-distribute.
20 Q. But do you understand that the
21 Controlled Substances Act provides that only
22 licensed entities are allowed to touch or
23 provide a controlled substance to anyone
24 else?

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1 MS. TABACCHI: Object to the
2 form. Beyond the scope. Calls for a
3 legal conclusion.
4 THE WITNESS: I understand that
5 one of the tenets of the Controlled
6 Substances Act is setting standards
7 for registration to distribute
8 controlled substances.
9 I don't think about that as a
10 closed system.
11 Q. (BY MR. BOWER) And does
12 Walmart acknowledge that one important aspect
13 of the CSA is that everyone in the chain of
14 distribution, starting with the manufacturers
15 and going through to the distributors and
16 down to the pharmacies, must be registered
17 with the DEA?
18 MS. TABACCHI: Object to the
19 form. Calls for a legal conclusion.
20 This is beyond the scope of the
21 notice.
22 THE WITNESS: Can you repeat
23 the question?
24 Q. (BY MR. BOWER) I'm just trying

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1 to understand Walmart's understanding of what
2 the CSA requires. Okay?
3 MS. TABACCHI: Which is not a
4 topic in the notice for the deposition
5 today.
6 MR. BOWER: Okay. Just so you
7 understand what I'm trying to ask.
8 Okay?
9 THE WITNESS: Yes.
10 Q. (BY MR. BOWER) Okay. And I'm
11 just trying to understand whether Walmart
12 acknowledges that everyone in that system,
13 from the manufacturers to the distributors to
14 the pharmacies, must be registered with the
15 DEA.
16 MS. TABACCHI: Object to the
17 form. Beyond the scope of the notice.
18 Calls for a legal conclusion.
19 THE WITNESS: Yes.
20 Q. (BY MR. BOWER) Walmart is
21 aware, for example, that its pharmacies are
22 registered with the DEA; correct?
23 A. Correct.
24 Q. And Walmart itself as a

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1 distributor was registered with the DEA at
2 the time it distributed controlled
3 substances; correct?
4 A. Correct.
5 Q. And Walmart is also familiar
6 with the manufacturers from which it acquires
7 controlled substances are also registered
8 with the DEA; is that correct?
9 MS. TABACCHI: Object to the
10 form. Beyond the scope.
11 THE WITNESS: Yes.
12 Q. (BY MR. BOWER) Are you
13 familiar with Mr. Rannazzisi from the DEA?
14 MS. TABACCHI: Object to the
15 form.
16 THE WITNESS: I'm familiar with
17 his name.
18 Q. (BY MR. BOWER) Is Walmart
19 familiar with Mr. Rannazzisi?
20 MS. TABACCHI: Object to the
21 form.
22 THE WITNESS: I know that we
23 have in our files a letter from
24 Mr. Rannazzisi.

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1 Q. (BY MR. BOWER) You referenced
2 a letter. How many letters does Walmart have
3 in its files from Mr. Rannazzisi?
4 MS. TABACCHI: Object to the
5 form, beyond the scope.
6 THE WITNESS: To my knowledge
7 in the search that was done, just one.
8 Q. (BY MR. BOWER) And would you
9 dispute the fact that Walmart has received
10 four letters from Mr. Rannazzisi?
11 MS. TABACCHI: Object to the
12 form.
13 MR. BOWER: I'll strike that.
14 Q. (BY MR. BOWER) Does Walmart
15 acknowledge that Mr. Rannazzisi sent Walmart
16 four letters regarding the distribution of
17 controlled substances?
18 MS. TABACCHI: Object to the
19 form.
20 THE WITNESS: I've seen one
21 letter that we have in our files.
22 So that's the only one that I'm
23 aware of.
24 Q. (BY MR. BOWER) And I'm not

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1 asking you in your personal capacity, just to
2 be clear. I'm asking you in your capacity as
3 Walmart here today. Does Walmart acknowledge
4 that Mr. Rannazzisi provided Walmart at least
5 four letters regarding the distribution of
6 controlled substances?
7 MS. TABACCHI: Object to the
8 form. Asked and answered.
9 THE WITNESS: I don't -- I
10 don't dispute it. I don't have
11 evidence of a record that I've been
12 able to review.
13 Q. (BY MR. BOWER) Would you agree
14 that if Walmart receives letters from the DEA
15 regarding the distribution of controlled
16 substances, that those letters are important?
17 MS. TABACCHI: Object to the
18 form.
19 THE WITNESS: We would hold
20 communication with the DEA important.
21 Q. (BY MR. BOWER) Would you agree
22 that Walmart should keep those communications
23 in its files?
24 MS. TABACCHI: Object to the

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1 form. Beyond the scope.
2 THE WITNESS: I think it
3 depends on what the -- what the nature
4 of the communication is as to whether
5 it should be filed and for how long it
6 should be filed.
7 Q. (BY MR. BOWER) Is it Walmart's
8 position that at some point those
9 communications would be discarded?
10 MS. TABACCHI: Object to the
11 form. Beyond the scope of the notice.
12 If you're talking about a
13 particular communication, I'd ask that
14 you present it to the witness.
15 THE WITNESS: I think that even
16 DEA guidance changes every time, so
17 there may be information that just
18 isn't relevant. And I just don't know
19 without seeing additional information.
20 Q. (BY MR. BOWER) Did Walmart
21 also enter a settlement agreement with
22 Mr. Rannazzisi?
23 MS. TABACCHI: Object to the
24 form. Beyond the scope of the notice.

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1 THE WITNESS: Can you be more
2 specific about Mr. Rannazzisi
3 specifically?
4 Q. (BY MR. BOWER) Sure. Has
5 Walmart ever entered a settlement agreement
6 where Mr. Rannazzisi was a signatory on
7 behalf of the government?
8 MS. TABACCHI: Object to the
9 form. Beyond the scope of the notice.
10 If you have a particular agreement,
11 I'd ask that you present it to us.
12 THE WITNESS: Can you be -- can
13 you be more specific from --
14 I'm not aware from a
15 distribution perspective that we've
16 had a settlement that Mr. Rannazzisi
17 signed.
18 Q. (BY MR. BOWER) And my question
19 wasn't limited to distribution. Are you
20 aware of any settlement agreement that
21 Walmart has entered into where Mr. Rannazzisi
22 was a signatory on behalf of the government?
23 MS. TABACCHI: Object to form.
24 Asked and answered. Beyond the scope.

<p style="text-align: right;">Page 74</p> <p>1 THE WITNESS: We've had a 2 settlement agreement with the DEA. 3 Q. (BY MR. BOWER) And what was 4 that agreement regarding? 5 MS. TABACCHI: Beyond the 6 scope. 7 THE WITNESS: It was regarding 8 our pharmacies, our dispensing. 9 Q. (BY MR. BOWER) Can you provide 10 any more specificity on that? 11 MS. TABACCHI: Beyond the 12 scope. 13 THE WITNESS: There was a 14 settlement agreement around a -- if I 15 recall correctly, the -- an effective 16 program around the dispensing of 17 controlled substances. And out of 18 that, the DEA asked us, or we were 19 required to begin documenting 20 refusal-to-fill activities by our 21 pharmacists. 22 (Whereupon, Deposition Exhibit 23 Walmart 3, Administrative 24 Memorandum of Agreement, WMT_MDL_</p>	<p style="text-align: right;">Page 76</p> <p>1 Okay. I have a question. Just 2 one question on this one. 3 On paragraph 4(a), kind of the 4 end of paragraph 4(a). 5 MS. TABACCHI: Zach, could you 6 just give the witness a moment? I 7 think she asked to read it before you 8 told her just to look at the 9 signature. Just let her read it. 10 Q. (BY MR. BOWER) Sure. I'll 11 read it for the record while you're doing 12 that. The question I have is -- the sentence 13 that says, "This compliance program shall 14 apply to all current and future Walmart 15 pharmacies registered with the DEA. Walmart 16 acknowledges and agrees that the obligations 17 undertaken in this subparagraph do not 18 fulfill the totality of its obligations under 19 the CSA and its implementing regulations." 20 Did I read that accurately? 21 MS. TABACCHI: Object to the 22 form. 23 I'd ask that you give the 24 witness an opportunity to read the</p>
<p style="text-align: right;">Page 75</p> <p>1 000043490-43496, was marked for 2 identification.) 3 Q. (BY MR. BOWER) Okay. You've 4 been handed what's been marked as Exhibit 3. 5 Is this the settlement agreement that you 6 were just testifying about? 7 A. Yes. 8 Q. Okay. So at least as of 2011, 9 Walmart was familiar with Mr. Rannazzisi. 10 Would you agree with that? 11 A. May I review the document? 12 MS. TABACCHI: Object to the 13 form. 14 Q. (BY MR. BOWER) I didn't ask 15 you a question about the document. Can you 16 see on page 7, Mr. Rannazzisi is a signatory? 17 Do you see that? 18 A. Yes. 19 Q. So would you agree that at 20 least as of this date, Walmart must have been 21 familiar with who Mr. Rannazzisi was. Right? 22 A. Yes. 23 Q. And if you could just turn to 24 page 2 of the document.</p>	<p style="text-align: right;">Page 77</p> <p>1 document. 2 This is beyond the scope of the 3 notice, also. 4 THE WITNESS: Yes, that's what 5 that portion reads. 6 Q. (BY MR. BOWER) So this 7 document is telling Walmart that, in addition 8 to their obligations here, it has other 9 obligations under the CSA. 10 Would you agree with that? 11 MS. TABACCHI: Object to the 12 form. Beyond the scope of the notice. 13 THE WITNESS: It's stating that 14 this does not fulfill all obligations 15 under the CSA. 16 Q. (BY MR. BOWER) Okay. And if 17 you look at kind of the last sentence on the 18 first page that rolls over to the second page 19 starting with "Moreover"? 20 The last sentence there, it 21 says, "Moreover, the parties believe that the 22 continued cooperation between the parties to 23 reduce the potential for diversion is in the 24 public interest." Do you see that?</p>

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1 MS. TABACCHI: I'm sorry, Zach,
2 I don't see where you're reading from.
3 MR. BOWER: Page 1, the last
4 two words on page 1 that says
5 "Moreover."
6 MS. TABACCHI: Oh, you're on
7 the first page.
8 MR. BOWER: Yeah, first two
9 words on the first page and then it
10 bleeds over to the second page.
11 So I'll just read it again.
12 It says, "Moreover, parties
13 believe that the continued cooperation
14 between the parties to reduce the
15 potential for diversion is in the
16 public interest."
17 Do you see that?
18 THE WITNESS: I see that.
19 Q. (BY MR. BOWER) So Walmart
20 acknowledged, in 2011, that reducing the
21 potential for diversion was in the public
22 interest. Would you agree with that?
23 MS. TABACCHI: This document is
24 beyond the scope.

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1 THE WITNESS: I see that, and I
2 also see in that sentence that -- the
3 point of working collaboratively with
4 the DEA, which I believe that we have
5 a history of doing.
6 Q. (BY MR. BOWER) Did Walmart
7 rely on guidance from the DEA in implementing
8 or designing its suspicious order monitoring
9 programs?
10 A. We didn't solely rely on
11 guidance, but we certainly had conversations
12 with the DEA regarding our plans, and took
13 into consideration any recommendations,
14 thoughts, suggestions that they had for how
15 we established our policies and practices.
16 Q. And what conversations are you
17 referring to specifically?
18 A. We have -- so in speaking with
19 Scott Culver, Scott relayed the conversations
20 that he had with the DEA in establishing the
21 C-II facility, our distribution facility,
22 even before any plans were built. Blueprints
23 were reviewed. Contractors were -- or at
24 least DEA-approved contractors to build the

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1 facility. Over multiple interactions with
2 the DEA, they've seen our processes. They've
3 reviewed our reports. They've asked for
4 additional information which we've provided.
5 And so we have a -- we have a long history of
6 interaction, positive interaction, and
7 collaborative interaction with the DEA.
8 Q. (BY MR. BOWER) Okay. And now
9 I want to ask probably a better question than
10 the last one. So my question is more focused
11 than that. I want to ask specifically what
12 conversations has Walmart had with the DEA
13 regarding designing or implementing its
14 suspicious order monitoring program for
15 controlled substances?
16 MS. TABACCHI: Object to the
17 form.
18 THE WITNESS: The conversations
19 have occurred over time, again, as the
20 distribution center was established
21 and reporting was pulled and reviewed.
22 As a part, one part of our order
23 monitoring, the DEA reviewed those
24 reports, and at one point asked us to

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1 begin sending those to them on a
2 regular basis. I learned that through
3 a conversation with Scott Culver.
4 And then through the years, as
5 we've made certain changes, those
6 changes have been discussed through
7 audits that the DEA has conducted at
8 various of our facilities, where
9 they've -- they've actually asked to
10 review our order monitoring process.
11 It's a part of their audit on their
12 audit checklist, and we've -- we've
13 never had a reported deficiency in the
14 way that they've reviewed those
15 programs.
16 Q. (BY MR. BOWER) When was the
17 first time a conversation occurred between
18 someone at Walmart and someone at the DEA
19 regarding Walmart's design or implementation
20 of a suspicious order monitoring program?
21 MS. TABACCHI: Object to the
22 form.
23 THE WITNESS: So from an
24 overall perspective?

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1 MS. TABACCHI: Beyond the scope
 2 of the notice from a time period
 3 perspective. I'm sorry.
 4 THE WITNESS: Before we
 5 started -- before we stood up the
 6 distribution center to distribute
 7 opioids, C-IIIs, Scott Culver reached
 8 out to the DEA to understand, make
 9 sure that all of the plans that we had
 10 that are inclusive of our obligations
 11 around preventing diversion were
 12 discussed with the DEA, and then,
 13 again, ongoing conversations have
 14 occurred as our program has evolved.
 15 Q. (BY MR. BOWER) Were those
 16 initial discussions that Scott Culver had
 17 with the DEA specific to order monitoring?
 18 A. There were -- there were
 19 conversations around reporting and what
 20 was -- what was expected. And how they --
 21 how the operation would -- would be
 22 established.
 23 Q. And what did Walmart understand
 24 that the DEA expected at that time?

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1 MS. TABACCHI: Beyond the
 2 scope.
 3 THE WITNESS: That our --
 4 MS. TABACCHI: You may answer.
 5 THE WITNESS: So the way that
 6 our policies and procedures were set
 7 up reflected our understanding of what
 8 our obligations were at that time.
 9 Q. (BY MR. BOWER) Well, I'm just
 10 trying to get a little bit more information
 11 as to what Walmart understood the DEA
 12 expected.
 13 So from those conversations,
 14 what did Mr. Culver take away as to what the
 15 DEA would require from a monitoring program?
 16 MS. TABACCHI: Object to the
 17 form. Beyond the scope.
 18 THE WITNESS: We didn't discuss
 19 in very specific detail any specific
 20 ask.
 21 What I do know is that the
 22 programming that was implemented was
 23 the result of those conversations.
 24 Q. (BY MR. BOWER) Okay. Were the

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1 programs that were implemented or in place as
 2 of 2006 also a result of those conversations?
 3 MS. TABACCHI: Object to the
 4 form.
 5 THE WITNESS: Those were --
 6 those were the results of ongoing
 7 conversations and changes that we have
 8 implemented over time.
 9 Q. (BY MR. BOWER) And I just want
 10 to focus now starting in the 2006 period.
 11 Walmart had suspicious order monitoring
 12 programs in place; correct?
 13 A. We had order monitoring in
 14 place in our DC, yes.
 15 Q. Were those order monitoring
 16 programs in any way designed or implemented
 17 based on conversations with the DEA?
 18 A. They weren't solely designed or
 19 approved -- the intent of the program wasn't
 20 solely designed or approved by the DEA, but
 21 we had conversations with the DEA to ensure
 22 that we were meeting those expectations.
 23 Q. Okay. And what information did
 24 Walmart learn from the DEA that went into its

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1 design and implementation of those programs?
 2 MS. TABACCHI: Object to the
 3 form.
 4 THE WITNESS: The program as
 5 designed would reflect what it was
 6 that the DEA expected of us at that
 7 time, which included alerting them,
 8 sending them information about the
 9 reviews that we were doing as to
 10 outlier orders.
 11 Q. (BY MR. BOWER) Okay. So
 12 Walmart understood in 2006 that the DEA
 13 expected that Walmart would alert them about
 14 outlying orders; correct?
 15 MS. TABACCHI: Object to the
 16 form, misstates testimony.
 17 MR. BOWER: I'm just reading
 18 your testimony back. You said the DEA
 19 expected of us at that time, which
 20 included alerting them. Right?
 21 So the DEA -- in 2006 Walmart
 22 understood that the DEA expected that
 23 Walmart would alert them of unusual
 24 orders; is that correct?

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1 MS. TABACCHI: Object to the
2 form.
3 THE WITNESS: They were outlier
4 orders. I -- I wouldn't call them
5 unusual orders.
6 Q. (BY MR. BOWER) So in 2006, was
7 Walmart only alerting the DEA of outlier
8 orders?
9 MS. TABACCHI: Object to the
10 form.
11 THE WITNESS: Our process at
12 that time was to provide notice to the
13 DEA of those outlier reports.
14 Q. (BY MR. BOWER) Okay. And
15 we'll get into more of that in a bit. I just
16 want to go back to the conversations with the
17 DEA.
18 Other than Mr. Culver, did
19 anyone else at Walmart speak with the DEA
20 prior to 2006 that had any impact on the way
21 Walmart designed programs that were in place
22 in 2006?
23 MS. TABACCHI: Object to the
24 form. Beyond the scope of the notice

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1 as to time period.
2 THE WITNESS: We had associates
3 at the DC that were interacting with
4 the DEA, but my knowledge on this
5 subject and the program that was in
6 place is based on that conversation
7 with Scott Culver. And Scott was the
8 lead for the distribution system at
9 that time.
10 Q. (BY MR. BOWER) And do you know
11 whom Scott spoke with at the DEA?
12 A. I believe it was Carolyn Adams.
13 And before Carolyn Adams it
14 would have been Don Hickman. And he also
15 mentioned someone that he spoke with in the
16 DC office specific to the process that
17 Walmart was undertaking, not specific to
18 order monitoring. But he had conversations
19 with DEA agents in the DC office around
20 policy.
21 MR. BOWER: Do you guys want to
22 take a break? We've been going over
23 an hour. Just take a quick break?
24 MS. TABACCHI: Sure.

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1 THE VIDEOGRAPHER: 9:31. Going
2 off the video record.
3 (Recess taken, 9:31 a.m. to
4 9:43 a.m.)
5 THE VIDEOGRAPHER: 9:43. We
6 are on the video record.
7 Q. (BY MR. BOWER) All right.
8 We're back on the record, Ms. Hiland. I'm
9 going to hand you what's been marked as
10 Exhibit 4.
11 (Whereupon, Deposition Exhibit
12 Walmart 4, 3-11-10 email from Edward
13 Harris. Subj: Updated: Wal-mart
14 Dendrite Conf. Call-Mon. March 15 @
15 11:00 Eastern/ 10:00 Central,
16 WMT_MDL_000011558-11565, was marked
17 for identification.)
18 Q. (BY MR. BOWER) And so while
19 you're reviewing that, please take a moment
20 to review it. I will state for the record
21 that this is an email with several
22 attachments. I only included one attachment,
23 which is the document beginning with 11562.
24 Because all the questions will be focused on

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1 this.
2 Okay? And the first of those
3 will be whether this is the letter you
4 referred to earlier regarding Mr. Rannazzisi,
5 that you had reviewed in preparation for
6 today's deposition.
7 MS. TABACCHI: Object to the
8 form.
9 THE WITNESS: It's in a strange
10 format, so I'm not sure. May I review
11 it?
12 MR. BOWER: Sure.
13 And just for the record, while
14 the witness is reviewing it, the Bates
15 number on this document is 11558, and
16 the attachment -- as I noted, there
17 are several attachments. This
18 attachment, its Bates number is 11562
19 through 565.
20 MS. TABACCHI: Zach, can you
21 tell us what are the pages that are
22 missing from this document?
23 MR. BOWER: Do you mean the
24 Bates numbers?

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1 MS. TABACCHI: Yes. Well --
2 MR. BOWER: I'm not sure. The
3 documents are referenced in the email,
4 so I'm sure they will be reflective of
5 Walmart's production.
6 MS. TABACCHI: I know, but for
7 context, you've -- this is a partial
8 compilation.
9 MR. BOWER: Yes, I already
10 stated that for the record.
11 MS. TABACCHI: I know. What is
12 missing?
13 MR. BOWER: The other documents
14 reflected in the attachments here.
15 Do you see the cover email
16 references a bunch of attachments?
17 And because we only have a limited
18 time today, I didn't include all
19 those. I only included the document
20 that I have questions on.
21 And really my only question on
22 this document -- feel free to review
23 it -- is whether this is the letter
24 you referred to earlier from

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1 Mr. Rannazzisi that you saw in
2 preparation for today's deposition.
3 MS. TABACCHI: Well, before we
4 go back to that, I would just ask that
5 you provide a complete document to the
6 witness even if you're only going to
7 ask for a portion of it, rather than a
8 partial compilation. I don't know how
9 many other documents you have like
10 this, that you have partial
11 compilations.
12 Would you mind just restating
13 the question? Or reading back the
14 question so the witness knows what the
15 question is?
16 MS. FUMERTON: When she's
17 finished.
18 MS. TABACCHI: Oh, sorry, let
19 her read.
20 MR. BOWER: Ma'am, do you need
21 to read this entire letter in order to
22 answer my question? Is that correct.
23 MS. TABACCHI: Zach, I think
24 it's fair for her. You're asking her

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1 a question about it.
2 Q. (BY MR. BOWER) Well, in a
3 respect it's not fair because we only have a
4 certain time on the record. I've handed her
5 a letter, and the only question is whether
6 this letter is the letter that she referred
7 to earlier that she reviewed in preparation
8 for today's deposition.
9 MS. TABACCHI: It's fair that
10 she should be given the time to read
11 the letter.
12 MR. BOWER: Yes. It is. But
13 that's the only question.
14 MS. TABACCHI: Just allow her
15 to read it.
16 THE WITNESS: This is not the
17 letter that I was referring to.
18 Q. (BY MR. BOWER) Now, is the
19 letter you're referring to in the binder
20 that's in front of you?
21 A. Yes.
22 Q. Could you just for the record
23 state the date of the letter that you're
24 referring to and the Bates number?

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1 A. I'm not finding it in the --
2 Q. No problem.
3 Well, do you recall the
4 approximate date of the letter you have seen?
5 A. I believe it was December of
6 2007.
7 Q. Okay. And let me make it maybe
8 a little bit easier for you and show you --
9 A. Ah, here. Here it is.
10 Q. Okay. Great.
11 A. The Bates number is -- do you
12 just need the last five?
13 Q. Sure. That's fine.
14 A. 43648.
15 Q. And what's the date of the
16 letter?
17 A. December 27th, 2007.
18 Q. And that document is a part of
19 a binder you brought with you today; correct?
20 A. Yes.
21 Q. Okay. Okay. So let's -- why
22 don't we do this ...
23 (Whereupon, Deposition Exhibit
24 Walmart 5, Letters from the U.S.

<p style="text-align: right;">Page 94</p> <p>1 Department of Justice/Drug Enforcement 2 Administration, CAH_MDL2804_ 3 01564780-1564773, was marked for 4 identification.) 5 Q. (BY MR. BOWER) You've been 6 handed what's been marked as Exhibit 5 to 7 today's deposition. And this is -- Exhibit 5 8 includes all four Rannazzisi letters. They 9 were produced by a different defendant in 10 this action. But I'm just using them for 11 sake of completeness. 12 I can try to focus most of my 13 questions on the letter that you have 14 specifically reviewed. Okay? Which is the 15 December 27, 2007 letter. But I do want to 16 know -- and you can flip through that 17 Exhibit 5 -- whether Walmart in fact received 18 all four letters from Mr. Rannazzisi. The 19 first is dated December 27, 2006. The next 20 is dated February 7, 2007, then we have the 21 December 2007 -- December 27, 2007 letter 22 which you referred to, and then we have 23 the June 12th, 2012 letter. 24 Do you see those?</p>	<p style="text-align: right;">Page 96</p> <p>1 no. You can put that aside. 2 Q. (BY MR. BOWER) Would you agree 3 that Walmart was a commercial entity 4 registered with the Drug Enforcement 5 Administration to distribute controlled 6 substances from January 1st, 2006 through 7 2017? 8 MS. TABACCHI: Object to the 9 form. 10 THE WITNESS: We were 11 registrants. 12 Q. (BY MR. BOWER) So is your 13 answer yes to my question? 14 MS. TABACCHI: Object to the 15 form. Asked and answered. 16 THE WITNESS: Yes. 17 Q. (BY MR. BOWER) Now we'll ask 18 about the document. Do you see that 19 Exhibit 5 contains four letters from 20 Mr. Rannazzisi? 21 A. Yes. Yes. 22 Q. Does Walmart acknowledge 23 receiving these four letters from 24 Mr. Rannazzisi?</p>
<p style="text-align: right;">Page 95</p> <p>1 MS. TABACCHI: Object to the 2 form, and in particular to the 3 reference to like all four Rannazzisi 4 letters. As you noted, these are from 5 another defendant's production. 6 MR. BOWER: And I will note 7 that each of the letters notes that 8 they were being sent to every 9 commercial entity in the United States 10 who had registered with the DEA to 11 distribute controlled substances. 12 Q. (BY MR. BOWER) And would you 13 agree that Walmart was registered with the 14 DEA to distribute controlled substances from 15 2006 through 2014? 16 MS. TABACCHI: Zach, I'm sorry. 17 She's still trying to read. 18 MR. BOWER: I'm not asking her 19 a question about the document. She 20 can put that aside for the moment. 21 MS. TABACCHI: You're not 22 asking her a question from the 23 document. 24 MR. BOWER: Not at the moment,</p>	<p style="text-align: right;">Page 97</p> <p>1 MS. TABACCHI: Object to the 2 form. These are letters that are from 3 another defendant's production. 4 MR. BOWER: I agree they're 5 from another defendant's production. 6 The reason they're not from Walmart's 7 production is because Walmart hasn't 8 produced them. My question is whether 9 Walmart received them. 10 MS. TABACCHI: Object to the 11 form. Just for the record, Walmart 12 has produced the letter that was 13 directed to Walmart that was located 14 in its files. So you can't criticize 15 Walmart for not producing these 16 documents that are from a different 17 defendant's production. 18 Q. (BY MR. BOWER) Is it Walmart's 19 position today, as you sit here, that Walmart 20 did not receive the other three letters from 21 Mr. Rannazzisi? 22 MS. TABACCHI: Object to the 23 form. 24 THE WITNESS: The only letter</p>

<p style="text-align: right;">Page 98</p> <p>1 that we were able to locate was the 2 December 27th. So I don't -- I don't 3 have evidence of having received the 4 other letters. 5 MR. BOWER: Okay. I move to 6 strike that answer as nonresponsive. 7 Q. (BY MR. BOWER) My question is 8 just very simple. Is it Walmart's position 9 today that it did not receive the other three 10 letters from Mr. Rannazzisi? 11 MS. TABACCHI: Object to the 12 form. Beyond the scope. Asked and 13 answered. 14 THE WITNESS: One of the 15 challenges that we noted with the 16 letter that we did receive is that 17 it's addressed to a pharmacy warehouse 18 at an address that is not a pharmacy 19 warehouse. And so I don't know if 20 that played into the fact that we 21 don't have a copy of these letters on 22 file. The only one that we were able 23 to find was the December 27th, 2007. 24 Q. (BY MR. BOWER) And so my</p>	<p style="text-align: right;">Page 100</p> <p>1 MS. TABACCHI: Object to the 2 form. 3 THE WITNESS: I cannot confirm 4 that based on the research I've done. 5 Q. (BY MR. BOWER) Can you deny 6 that based on the research you've done? 7 MS. TABACCHI: Object to the 8 form. 9 THE WITNESS: I can't deny 10 that. 11 Q. (BY MR. BOWER) So you just 12 don't know. Is that correct? 13 MS. TABACCHI: Object to the 14 form. 15 THE WITNESS: I don't have 16 evidence to show that we have it in 17 our files. 18 Q. (BY MR. BOWER) Do you have 19 evidence to show that it was never received? 20 MS. TABACCHI: Object to the 21 form. Proving a negative. 22 Q. (BY MR. BOWER) Well, you 23 mentioned that the letter you do have was 24 addressed to somebody; correct?</p>
<p style="text-align: right;">Page 99</p> <p>1 question is just very simple. Did Walmart 2 receive the other letters from 3 Mr. Rannazzisi? 4 MS. TABACCHI: Object to the 5 form. Asked and answered. 6 THE WITNESS: I can't confirm, 7 because I haven't seen those letters 8 in our files. 9 Q. (BY MR. BOWER) So is Walmart's 10 answer today is I don't know? Is that 11 accurate? 12 MS. TABACCHI: Object to the 13 form. Asked and answered. 14 The witness has already 15 provided an answer. 16 THE WITNESS: The only letter 17 we were able to locate was the one 18 letter. 19 Q. (BY MR. BOWER) And I 20 understand you were only able to locate one 21 letter. But my question is different. Okay? 22 My question is, for example, did Walmart 23 receive a letter dated September [sic] 27, 24 2006 from Mr. Rannazzisi?</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Correct. 2 Q. Who was it addressed to? 3 A. It was addressed to Walmart 4 Pharmacy Warehouse at 702 Southwest 8th 5 Street in Bentonville, Arkansas. 6 Q. And how did Walmart come to 7 find that letter in connection with this 8 case? 9 MS. TABACCHI: Object to the 10 form. 11 THE WITNESS: It was -- it was 12 in a file cabinet. 13 Q. (BY MR. BOWER) And where was 14 that file cabinet located? 15 A. In an archive room. 16 Q. Did Walmart ever inquire as to 17 the person that received that letter, whether 18 they received other letters from 19 Mr. Rannazzisi? 20 MS. TABACCHI: Object to the 21 form. Lack of foundation. 22 THE WITNESS: The archive was 23 for associates that were -- had left 24 Walmart.</p>

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1 Q. (BY MR. BOWER) And did Walmart
2 contact any of those associates to determine
3 whether they received other letters from
4 Mr. Rannazzisi?
5 MS. TABACCHI: Object to the
6 form. Beyond the scope of the notice.
7 THE WITNESS: Not being aware
8 of those letters, I -- we did not
9 contact anyone.
10 Q. (BY MR. BOWER) So is it
11 Walmart's position that prior to sitting here
12 today, it is unaware of the other letters
13 that were sent to registrants by
14 Mr. Rannazzisi?
15 MS. TABACCHI: Object to the
16 form. Beyond the scope of the notice.
17 THE WITNESS: We have -- we
18 have the one letter that we have been
19 able to produce and review.
20 Q. (BY MR. BOWER) Is Walmart
21 aware that Mr. Rannazzisi sent additional
22 letters?
23 MS. TABACCHI: Object to the
24 form. Are you asking us about our

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1 awareness today?
2 Q. (BY MR. BOWER) I'm asking
3 whether Walmart is aware. This is a
4 question. Is it aware of whether
5 Mr. Rannazzisi sent additional letters other
6 than the one it received and is in the
7 notebook that they brought with them today?
8 MS. TABACCHI: Object to the
9 form.
10 Could you please read back the
11 question?
12 Q. (BY MR. BOWER) I'll ask it
13 again.
14 Is Walmart aware, as it sits
15 here today, of whether Mr. Rannazzisi sent
16 other letters to registrants of controlled
17 substances in addition to the letter it
18 received in September -- or sorry -- in
19 December of 2007?
20 MS. TABACCHI: Object to the
21 form. Beyond the scope of the notice.
22 THE WITNESS: I see these
23 letters in Exhibit 5 before me.
24 MR. BOWER: Can you please read

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1 back the question?
2 (Whereupon, the following
3 testimony was read by the court
4 reporter.)
5 "QUESTION: Is Walmart aware,
6 as it sits here today, of whether
7 Mr. Rannazzisi sent other letters to
8 registrants of controlled substances
9 in addition to the letter it received
10 in December of 2007?"
11 (End of readback.)
12 MS. TABACCHI: Object to the
13 form. Beyond the scope of the notice.
14 THE WITNESS: I see these
15 letters today.
16 Q. (BY MR. BOWER) If you hadn't
17 seen those letters today, would you have
18 known they exist?
19 MS. TABACCHI: Object to the
20 form.
21 THE WITNESS: I -- the only
22 letter that I'm aware of is the
23 December 2007.
24 Q. (BY MR. BOWER) And that --

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1 your answer is on behalf of Walmart; correct?
2 MS. TABACCHI: Object to the
3 form, beyond the scope.
4 THE WITNESS: Yes.
5 Q. (BY MR. BOWER) Is Walmart
6 aware of whether the letters from
7 Mr. Rannazzisi are available online?
8 MS. TABACCHI: Object to the
9 form. Beyond the scope of the notice.
10 THE WITNESS: I'm not aware.
11 Q. (BY MR. BOWER) Has Walmart ever
12 been to any conferences or meetings where the
13 letters from Mr. Rannazzisi that it did not
14 receive in 2007 were discussed?
15 MS. TABACCHI: Object to the
16 form.
17 THE WITNESS: I don't have that
18 information.
19 Q. (BY MR. BOWER) Did Walmart ever
20 look online to determine whether
21 Mr. Rannazzisi sent additional letters to his
22 December 2007 letter to Walmart?
23 MS. TABACCHI: Object to the
24 form. Beyond the scope of the notice.

<p style="text-align: right;">Page 106</p> <p>1 THE WITNESS: We would be 2 interested in making sure that we were 3 following the policies and procedures 4 to ensure that we were protected 5 against diversion of controlled 6 substances. And having conversations 7 with our local DEA agents that we 8 worked with on a regular basis. 9 So to reach out to see if there 10 was additional guidance, we -- we 11 wouldn't have the idea to -- that 12 there was information there that 13 wasn't being conveyed to us through 14 our interactions with other DEA 15 agents. 16 Q. (BY MR. BOWER) Is it your 17 understanding, as you sit here today on 18 behalf of Walmart, that Walmart received the 19 December 27, 2007 letter on or about that 20 date? 21 MS. TABACCHI: Object to the 22 form. 23 THE WITNESS: That we -- can 24 you repeat the question?</p>	<p style="text-align: right;">Page 108</p> <p>1 you were finished. 2 Well, as we noted before on 3 Exhibit 3, the MOU also notes that Walmart 4 acknowledges and agrees that the obligation 5 undertaken in this subparagraph do not 6 fulfill the totality of its obligations under 7 the CSA in its implementing regulations. 8 Do you recall that testimony? 9 MS. TABACCHI: I appreciate 10 that you're short on time. Please 11 allow the witness time to reach for 12 what you're reading from so that she 13 can review it. 14 MR. BOWER: And feel free to 15 review it. I was just trying to 16 shortcut this, but you can review it 17 again. We already went over this. 18 It's 4(a), the last two sentences in 19 4(a) in Exhibit 3. 20 MS. TABACCHI: Would you mind 21 reading back Mr. Bower's question? 22 Q. (BY MR. BOWER) I'll rephrase. 23 Do you recall we discussed 24 those last two sentences in paragraph 4(a) of</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. (BY MR. BOWER) Sure. Is it 2 your understanding, as you sit here today on 3 behalf of Walmart, that Walmart received the 4 December 27, 2007 letter on or about that 5 date? 6 MS. TABACCHI: Object to the 7 form. 8 THE WITNESS: Yes. 9 MR. BOWER: Okay. 10 Q. (BY MR. BOWER) Did Walmart, in 11 connection with the agreement signed with 12 Mr. Rannazzisi in 2011, ever discuss with him 13 these "Dear Registrant" letters? 14 MS. TABACCHI: Object to the 15 form. Beyond the scope of the notice. 16 THE WITNESS: The MOU was 17 focused on our dispensing function. 18 And so I don't know that there was a 19 conversation that would have naturally 20 tied to our dispensing function. 21 Q. (BY MR. BOWER) Well, as we 22 noticed -- 23 A. Our distribution function. 24 Q. Sorry. I apologize. I thought</p>	<p style="text-align: right;">Page 109</p> <p>1 Exhibit 3? 2 A. Yes. 3 Q. And do you recall that at this 4 time that Walmart acknowledged that this MOU 5 did not fulfill the totality of its 6 obligations under the CSA? 7 MS. TABACCHI: Object to form. 8 Beyond the scope. 9 THE WITNESS: Yes. 10 Q. (BY MR. BOWER) And at that time 11 did anyone from Walmart ask Mr. Rannazzisi, 12 "Hey, what other obligations are you talking 13 about?" 14 MS. TABACCHI: Object to the 15 form. Beyond the scope of the notice. 16 THE WITNESS: The MOA [sic] was 17 focused on our dispensing 18 registrations. My understanding of 19 those obligations certainly extended 20 beyond the scope of this MOA, as it 21 related to our dispensing programming. 22 And, in fact, my understanding of this 23 MOA was that the compliance 24 programming that was outlined here was</p>

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1 specific to dispensing. So I separate
2 those two functions as -- because the
3 registrations were different.
4 Q. (BY MR. BOWER) All right. So
5 let's go back, then, to the letter that --
6 the one letter that Walmart acknowledged it
7 received. Okay? The December 27, 2007
8 letter.
9 MR. BOWER: Since we can't get
10 agreement on whether Walmart received
11 other letters today, I will limit my
12 questions to this letter, but I will
13 note that it's our position that
14 Walmart likely received the other
15 letters and just didn't produce them.
16 Okay.
17 MS. TABACCHI: I believe we've
18 already addressed that, Zach. That's
19 not an issue for this witness, the
20 document production.
21 Q. (BY MR. BOWER) So let's focus
22 on the December 2007 letter that you are
23 prepared for to testify today, okay?
24 A. Yes.

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1 Q. Did you review this letter in
2 preparation for your testimony today?
3 MS. FUMERTON: Are we on a new
4 exhibit, then?
5 MR. BOWER: We are on what's
6 part of the binder that you brought,
7 the example of the Rannazzisi letter
8 from December 28, 2007.
9 MS. FUMERTON: So the short
10 time.
11 MR. BOWER: Yes.
12 MS. TABACCHI: Are you marking?
13 Do you have a copy of this?
14 MR. BOWER: I have a copy
15 that's the same letter, which is
16 referenced in the composite Exhibit 5.
17 MS. TABACCHI: It's not the
18 same letter because it's not addressed
19 to Walmart.
20 Q. (BY MR. BOWER) Okay. But ...
21 If you could turn to the
22 December 27, 2007 letter. Do you see that?
23 Or do you have it in front of
24 you?

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1 A. Yes.
2 Q. How many pages is your letter?
3 A. It's two.
4 MR. BOWER: I mean, if you want
5 to go off the record, we can print a
6 copy of that one out if you want. I'm
7 just frankly surprised that Walmart
8 disavows receiving other letters, so
9 that's why I'm a little bit off
10 schedule here. So if you want to go
11 off the record, we can use that -- we
12 can --
13 MS. TABACCHI: You are
14 mischaracterizing the testimony. As
15 we told you, this letter from December
16 2007 is the only letter that was found
17 in Walmart's files.
18 Q. (BY MR. BOWER) What is the
19 address reflected on that letter?
20 A. It's Walmart Pharmacy
21 Warehouse, 702 Southwest 8th Street.
22 Q. (BY MR. BOWER) And what is
23 located at that address?
24 A. That's the Walmart corporate

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1 office where the licenses are issued.
2 Q. So it appears at least that
3 this December 27, 2007 letter was sent to the
4 Walmart corporate offices? Is that correct?
5 MS. TABACCHI: Object to the
6 form.
7 THE WITNESS: It was sent to
8 the Walmart office address.
9 Q. (BY MR. BOWER) And that's the
10 Walmart corporate address; correct?
11 A. Yes.
12 Q. In preparation for today's
13 deposition, did you speak with anyone in that
14 office as to whether Walmart received any
15 other letters from Mr. Rannazzisi?
16 MS. TABACCHI: Object to the
17 form.
18 THE WITNESS: Specific to the
19 other letters? I did not speak to
20 anyone.
21 Q. (BY MR. BOWER) Did you speak
22 to anyone from that office in any capacity in
23 preparation for today's deposition?
24 MS. TABACCHI: Object to the

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1 form.
2 THE WITNESS: Yes. All of the
3 associates -- or several of the
4 associates that I spoke to are based
5 at the corporate office.
6 Q. (BY MR. BOWER) And by
7 "corporate office," is it the same or
8 synonymous to "home office"?
9 A. Yes.
10 Q. Okay. And just to be clear,
11 you did review this letter in preparation for
12 your deposition today; correct?
13 A. Yes.
14 Q. Do you see the first letter --
15 I mean the first sentence of the letter notes
16 that it's being sent to every entity in the
17 United States who's registered with the DEA
18 to manufacture or distribute controlled
19 substances?
20 A. Yes.
21 Q. And that would include Walmart;
22 correct?
23 A. At this -- yes, at this time it
24 did include Walmart.

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1 Q. Okay. And it included Walmart
2 up until it stopped distributing controlled
3 substances in 2018; correct?
4 MS. TABACCHI: Object to the
5 form.
6 THE WITNESS: Yes.
7 Q. (BY MR. BOWER) And do you
8 note, in the end of the first paragraph
9 there, beginning with the sentence
10 "Accordingly." Do you see that?
11 A. I'm sorry, where are you?
12 Q. Sorry, the second -- I guess
13 it's the second full paragraph?
14 It says, "Accordingly, DEA does
15 not approve or otherwise endorse any specific
16 system for reporting suspicious orders?"
17 Do you see that?
18 A. Yes.
19 Q. So Walmart understood, at least
20 as of the end of 2007, that DEA would not
21 endorse any specific system; is that correct?
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: We had

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1 collaborative communications with the
2 DEA. We didn't ask them -- we didn't
3 ask them to solely bless or deem that
4 a specific program was our only
5 responsibility.
6 Q. (BY MR. BOWER) Well, he
7 further explains, right, Mr. Rannazzisi goes
8 on to say, "Past communications with DEA,
9 whether implicit or explicit that could be
10 construed as approval of a particular system
11 for reporting suspicious orders should no
12 longer be taken to mean that the DEA approves
13 a specific system."
14 Do you see that?
15 A. Yes.
16 Q. Does Walmart disagree with that
17 statement?
18 MS. TABACCHI: Object to the
19 form. Beyond the scope of the notice.
20 We are not required to speak to
21 agreement or disagreement with this
22 letter.
23 THE WITNESS: As it applies to
24 our process, there was -- there was no

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1 system that was approved or
2 disapproved. We had policies and
3 procedures that were routinely
4 reviewed by the DEA in ongoing
5 conversations, even after the date of
6 this letter.
7 Q. (BY MR. BOWER) And is it
8 Walmart's position that whether the DEA
9 reviewed or approved of a process would
10 factor into whether Walmart met its
11 obligations under the CSA?
12 MS. TABACCHI: Object to the
13 form. Beyond the scope of the notice.
14 THE WITNESS: The
15 communications and review advisement
16 of DEA was important to us throughout
17 the process. We don't -- we did not
18 hold that the DEA approved a specific
19 system. We had policies and practices
20 in place that we shared with them,
21 continually, throughout the time that
22 we were distributing controlled
23 substances.
24 Q. (BY MR. BOWER) And would you

<p style="text-align: right;">Page 118</p> <p>1 agree that it was Walmart's obligation to 2 develop policies and practices that met the 3 standard of the CSA and its regulations? 4 MS. TABACCHI: Object to the 5 form. Calls for a legal conclusion. 6 Beyond the scope. 7 THE WITNESS: Our policies and 8 procedures were in place to ensure 9 that we had systems to prevent 10 diversion according to our obligations 11 under that registration. 12 Q. (BY MR. BOWER) And did Walmart 13 develop its policies and procedures for 14 monitoring of orders of controlled substances 15 to meet its obligations under the CSA and the 16 regulations promulgated thereunder? 17 MS. TABACCHI: Object to the 18 form. 19 THE WITNESS: We developed our 20 policies and procedures to show due 21 diligence in the way that we were 22 safeguarding and preventing diversion 23 of controlled substances. 24 Q. (BY MR. BOWER) And Walmart did</p>	<p style="text-align: right;">Page 120</p> <p>1 "QUESTION: As you sit here 2 today, does Walmart dispute that the 3 programs implemented to monitor for 4 orders of controlled substances were 5 designed to meet its obligations under 6 the CSA?" 7 (End of readback.) 8 MS. TABACCHI: Object to the 9 form. I think you actually read it 10 right. 11 Q. (BY MR. BOWER) To make it 12 easy, I'll rephrase. 13 Does Walmart today dispute that 14 the programs it designed to monitor orders of 15 controlled substances were intended to meet 16 its obligations under the CSA? 17 MS. TABACCHI: Object to the 18 form. 19 THE WITNESS: Our policies and 20 procedures were intended to meet our 21 obligations as a registrant under the 22 CSA. 23 Q. (BY MR. BOWER) And if Walmart 24 did not meet those obligations, it could</p>
<p style="text-align: right;">Page 119</p> <p>1 so in order to meet its obligations under the 2 CSA; correct? 3 MS. TABACCHI: Object to the 4 form. It calls for a legal 5 conclusion. 6 THE WITNESS: That's the 7 guiding regulation or law that the 8 registration is based on. 9 Q. (BY MR. BOWER) Well, as you 10 sit here today, do you dispute that Walmart's 11 programs for monitoring orders of 12 suspicious -- of -- strike that. 13 As you sit here today, does 14 Walmart dispute that the programs implemented 15 to monitor for orders of controlled 16 substances were designed to meet its 17 obligations under the CSA? 18 MS. TABACCHI: Object to the 19 form. Beyond the scope of the notice. 20 Would you mind reading back the 21 question. 22 (Whereupon, the following 23 testimony was read by the court 24 reporter.)</p>	<p style="text-align: right;">Page 121</p> <p>1 potentially lose its license to distribute 2 controlled substances; isn't that correct? 3 MS. TABACCHI: Object to the 4 form. Beyond the scope of the notice. 5 Examples. 6 THE WITNESS: In a hypothetical 7 situation where we weren't meeting an 8 obligation, that would -- revocation 9 is an option. 10 Q. (BY MR. BOWER) Are you 11 familiar with examples of when that has 12 concurred; correct? 13 MS. TABACCHI: Object to the 14 form. Beyond the scope of the notice. 15 Examples. 16 Q. (BY MR. BOWER) Walmart's 17 familiar with, for example, the Masters case; 18 correct? 19 MS. TABACCHI: Object to the 20 form. 21 THE WITNESS: Yes. 22 Q. (BY MR. BOWER) And what 23 happened in that case? 24 MS. TABACCHI: Object to the form. Beyond the scope of the notice.</p>

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1 THE WITNESS: There was a
2 revocation.
3 Q. (BY MR. BOWER) And do you
4 recall why that revocation occurred?
5 MS. TABACCHI: Object to the
6 form. Beyond the scope of the notice.
7 THE WITNESS: My understanding
8 is that the -- that Masters was under
9 something of a -- of an MOA with the
10 DEA around corrections to programs
11 that they had in their order
12 monitoring program, and the DEA found
13 that later they were not following
14 those -- the tenets of that MOA was my
15 understanding.
16 Q. (BY MR. BOWER) Did you review
17 the Masters decision in preparation for
18 today's deposition?
19 A. I did.
20 Q. Was -- was that copy that you
21 reviewed in your binder as well?
22 A. Yes.
23 Q. And we can talk about that
24 maybe in a few minutes. I just wanted to

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1 clear that up.
2 So let's go back to this
3 December 27, 2007 letter.
4 When Walmart received this
5 letter in 2007, did it undertake any review
6 or audit of its suspicious order monitoring
7 procedures?
8 MS. TABACCHI: Object to the
9 form.
10 THE WITNESS: Can you be
11 specific about what you mean by
12 "review"?
13 Q. (BY MR. BOWER) Do you need
14 me -- do you not understand what the word
15 "review" means?
16 A. Specific at the time that the
17 letter was received?
18 Q. As a result of receiving this
19 letter -- let me put it that way -- did
20 Walmart undertake any review or audit of its
21 suspicious order monitoring procedures that
22 were in existence at that time?
23 MS. TABACCHI: Object to the
24 form.

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1 THE WITNESS: We continually
2 review and monitor our programs and
3 policies. And so in this time frame,
4 we -- that would have been part of how
5 we were approaching our programming in
6 general, in total as an approach to
7 how we looked at our obligations.
8 Q. (BY MR. BOWER) But did Walmart
9 do anything in specific response to this
10 letter in connection with its suspicious
11 order monitoring policies for controlled
12 substances?
13 MS. TABACCHI: Object to the
14 form.
15 THE WITNESS: Nothing that's
16 specifically tied to this -- this
17 letter.
18 Q. (BY MR. BOWER) Did this letter
19 lead to any changes in Walmart's policies and
20 procedures for monitoring of controlled
21 substances?
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: Specific --

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1 there's not a change that's
2 specifically tied to the letter.
3 Q. (BY MR. BOWER) No one at
4 Walmart was concerned that Walmart should no
5 longer rely on implicit or explicit guidance
6 from the DEA?
7 MS. TABACCHI: Object to the
8 form.
9 THE WITNESS: So we continued
10 our collaborative work with the DEA.
11 But we didn't rely on a yes-or-no
12 opinion from the DEA. We would put
13 policies, practices in place, and then
14 communicate with the DEA over time and
15 make changes if there were changes
16 that were suggested, and we
17 implemented changes to our policies
18 independently ahead of DEA approval or
19 blessing.
20 Q. (BY MR. BOWER) Is it Walmart's
21 testimony today that the DEA has ever
22 approved or blessed Walmart's policies for
23 monitoring orders of controlled substances?
24 MS. TABACCHI: Object to the

<p style="text-align: right;">Page 126</p> <p>1 form.</p> <p>2 THE WITNESS: We've had</p> <p>3 conversations with the DEA where they</p> <p>4 agreed with the process that we</p> <p>5 were -- that we had implemented versus</p> <p>6 an outright approval.</p> <p>7 Q. (BY MR. BOWER) And when did</p> <p>8 those conversations occur, where the DEA</p> <p>9 occurred with the process that was</p> <p>10 implemented?</p> <p>11 A. So Scott Culver relayed to me</p> <p>12 the conversations that I testified to</p> <p>13 earlier, with the DEA, around our early</p> <p>14 programs. And then we have, through audits</p> <p>15 that were conducted, different -- at the</p> <p>16 different distribution centers we have</p> <p>17 associates relaying information from the DEA,</p> <p>18 with no audit finding any deficiency. And I</p> <p>19 spoke to Mike Mullins, and he relayed to me</p> <p>20 that on the DEA audit form, order monitoring</p> <p>21 was one of the areas that they checked. So</p> <p>22 from that, we found -- we have not been aware</p> <p>23 that we've had a deficiency in our program.</p> <p>24 Q. Well, my question is a little</p>	<p style="text-align: right;">Page 128</p> <p>1 review.</p> <p>2 Q. (BY MR. BOWER) Well, has the</p> <p>3 DEA ever called into question Walmart's</p> <p>4 process for order monitoring for controlled</p> <p>5 substances?</p> <p>6 MS. TABACCHI: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: No, there's no --</p> <p>9 there's no evidence that we have that</p> <p>10 says our order monitoring program</p> <p>11 didn't meet an expectation.</p> <p>12 MR. BOWER: Just so the record</p> <p>13 is clear, let's go ahead and mark a</p> <p>14 copy. I'll go ahead and do that -- of</p> <p>15 the Walmart Rannazzisi letter.</p> <p>16 (Whereupon, Deposition Exhibit</p> <p>17 Walmart 6, 12-27-07 letter from U.S.</p> <p>18 Department of Justice/Drug Enforcement</p> <p>19 Administration, WMT_MDL_000043648-</p> <p>20 43649, was marked for identification.)</p> <p>21 MS. FUMERTON: And this is</p> <p>22 going to be marked as Exhibit 6?</p> <p>23 MR. BOWER: Yep.</p> <p>24 Q. (BY MR. BOWER) So looking at</p>
<p style="text-align: right;">Page 127</p> <p>1 bit different, though. As you sit here</p> <p>2 today, can you provide to us any specific</p> <p>3 conversations where the DEA blessed or</p> <p>4 otherwise endorsed Walmart's suspicious order</p> <p>5 monitoring program?</p> <p>6 MS. TABACCHI: Object to the</p> <p>7 form. Asked and answered.</p> <p>8 THE WITNESS: No, I testified</p> <p>9 that there was no specific deeming of</p> <p>10 appropriateness. There were reviews</p> <p>11 of our processes over time and never a</p> <p>12 deficiency noted.</p> <p>13 Q. (BY MR. BOWER) Other than the</p> <p>14 audits that you referenced, are there any</p> <p>15 other specific instances where the DEA</p> <p>16 reviewed Walmart's procedures for suspicious</p> <p>17 order monitoring for controlled substances?</p> <p>18 MS. TABACCHI: Object to the</p> <p>19 form.</p> <p>20 THE WITNESS: We've had</p> <p>21 communication around specific tenets</p> <p>22 of the order monitoring, but not a --</p> <p>23 not a review. So I think</p> <p>24 communication, not necessarily a</p>	<p style="text-align: right;">Page 129</p> <p>1 Exhibit 6, do you know what the date on the</p> <p>2 top refers to? I note the date January 25th,</p> <p>3 2008, 11:46 a.m.</p> <p>4 A. I do not.</p> <p>5 Q. Do you see that? What about</p> <p>6 the information to the right of the top? It</p> <p>7 says No. 4043.</p> <p>8 Do you see that?</p> <p>9 A. I see that.</p> <p>10 Q. Do you know what that refers</p> <p>11 to?</p> <p>12 A. No.</p> <p>13 Q. So let's continue talking about</p> <p>14 the substance of the letter, then.</p> <p>15 Let me ask you this: If you</p> <p>16 look at the last paragraph on the first page,</p> <p>17 Mr. Rannazzisi is telling Walmart, "For</p> <p>18 example, if an order deviates substantially</p> <p>19 from a normal pattern, the size of the order</p> <p>20 does not matter and the order should be</p> <p>21 reported as suspicious."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Did Walmart have policies and</p>

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<p>1 procedures in place as of January of 2008</p> <p>2 that would allow it to report suspicious</p> <p>3 orders that deviated substantially from a</p> <p>4 normal pattern regardless of size?</p> <p>5 MS. TABACCHI: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: Our programs --</p> <p>8 again, because of the -- because of</p> <p>9 the process of Walmart's</p> <p>10 self-distribution, pattern was a -- a</p> <p>11 component of the ordering process that</p> <p>12 was a little bit different within</p> <p>13 that -- within that system, because we</p> <p>14 controlled the dates that the -- that</p> <p>15 the pharmacies' orders were placed.</p> <p>16 Q. (BY MR. BOWER) Is it Walmart's</p> <p>17 position that because it was a</p> <p>18 self-distributor of controlled substances,</p> <p>19 that the CSA and the regulations applied to</p> <p>20 it differently?</p> <p>21 MS. TABACCHI: Object to the</p> <p>22 form. Calls for a legal conclusion.</p> <p>23 Beyond the scope of the notice.</p> <p>24 THE WITNESS: No, but what I'd</p>	<p>1 MS. TABACCHI: Beyond the</p> <p>2 scope.</p> <p>3 THE WITNESS: That's -- what I</p> <p>4 was saying was the way that we would</p> <p>5 look at deviate substantially from a</p> <p>6 normal pattern took into account our</p> <p>7 practices and policies.</p> <p>8 Q. (BY MR. BOWER) Other than</p> <p>9 limiting orders to once a week, are there any</p> <p>10 other practices and policies that impacted</p> <p>11 the way Walmart looked at whether an order</p> <p>12 deviated from a normal pattern?</p> <p>13 MS. TABACCHI: I don't</p> <p>14 remember.</p> <p>15 THE WITNESS: Can you restate?</p> <p>16 Or read back? Can you restate?</p> <p>17 MR. BOWER: Sure. I'll read</p> <p>18 back because I think that question is</p> <p>19 pretty straightforward.</p> <p>20 Q. (BY MR. BOWER) Other than</p> <p>21 limiting orders to once a week, are there any</p> <p>22 other practices or policies that impacted the</p> <p>23 way Walmart determined whether an order</p> <p>24 deviated from a normal pattern?</p>
Page 131	Page 133
<p>1 believe is that the -- how we evaluate</p> <p>2 "deviates substantially" was</p> <p>3 different. We -- how we evaluated</p> <p>4 whether or not deviates substantially</p> <p>5 applied to an order took into account</p> <p>6 the fact that we had scheduled order</p> <p>7 dates for each of the stores.</p> <p>8 Q. (BY MR. BOWER) Well, do you</p> <p>9 know whether other distributors had also</p> <p>10 similar scheduled order dates from their</p> <p>11 stores to which they distributed?</p> <p>12 MS. TABACCHI: Object to the</p> <p>13 form. Lack of foundation. Beyond the</p> <p>14 scope of the notice.</p> <p>15 THE WITNESS: I know what</p> <p>16 Walmart's practices have been.</p> <p>17 Q. (BY MR. BOWER) But your</p> <p>18 suggestion was to me that Walmart's practices</p> <p>19 because it's a self-distributor is somehow</p> <p>20 different than practices of other</p> <p>21 distributors. Is that correct?</p> <p>22 MS. TABACCHI: Object to the</p> <p>23 form. Misstates the testimony.</p> <p>24 THE WITNESS: No.</p>	<p>1 MS. TABACCHI: Object to the</p> <p>2 form.</p> <p>3 THE WITNESS: We looked at</p> <p>4 other information if an order was</p> <p>5 flagged as an outlier or triggered as</p> <p>6 an outlier.</p> <p>7 Q. (BY MR. BOWER) And Walmart was</p> <p>8 doing that in 2007? Is that your testimony?</p> <p>9 MS. TABACCHI: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 Q. (BY MR. BOWER) Other than</p> <p>13 whether an order was flagged as an outlier,</p> <p>14 and Walmart practiced limiting orders for</p> <p>15 controlled substances to once a week, are</p> <p>16 there any other factors that Walmart</p> <p>17 considered in determining whether an order</p> <p>18 deviated from a normal pattern?</p> <p>19 MS. TABACCHI: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: There may have</p> <p>22 been others. It would be</p> <p>23 situation-specific for the store and</p> <p>24 the order that was placed, including</p>

<p style="text-align: right;">Page 134</p> <p>1 the drug that was included in that 2 order. 3 Q. (BY MR. BOWER) Okay. And 4 Walmart doesn't dispute that it had that 5 obligation in 2007; correct? 6 MS. TABACCHI: Object to the 7 form. What obligation? 8 Q. (BY MR. BOWER) The obligation 9 that we've been talking about. To -- 10 MS. TABACCHI: You're 11 paraphrasing. 12 Q. (BY MR. BOWER) -- report as 13 suspicious an order that deviates 14 substantially from a normal pattern. 15 MS. TABACCHI: Object to the 16 form. 17 THE WITNESS: Our programs were 18 in place to meet those obligations. 19 Q. (BY MR. BOWER) Did Walmart -- 20 in 2000 -- let me strike that. 21 In January 2008, was Walmart 22 reporting as suspicious orders that deviated 23 substantially from a normal pattern, "yes" or 24 "no"?</p>	<p style="text-align: right;">Page 136</p> <p>1 "orders deviating from a normal size," 2 are you reading that from the ... 3 Q. (BY MR. BOWER) I'm not reading 4 that from anywhere. It's just a question. 5 MS. TABACCHI: That's the 6 problem. 7 MR. BOWER: I don't think I 8 have to read my questions from 9 somewhere unless I'm familiar with 10 some -- 11 MS. TABACCHI: If you're going 12 to try to represent what the law is -- 13 MR. BOWER: I'm asking the 14 question. 15 Q. (BY MR. BOWER) Does Walmart 16 agree that in January of 2008, it had an 17 obligation to report orders that deviated 18 substantially from a normal size? 19 MS. TABACCHI: Object to the 20 form. Calls for a legal conclusion. 21 THE WITNESS: If we detected an 22 order that deviated from size and 23 could not -- and could not explain the 24 reason for that, therefore deeming</p>
<p style="text-align: right;">Page 135</p> <p>1 MS. TABACCHI: Object to the 2 form. 3 THE WITNESS: If they were 4 determined to deviate from a pattern, 5 our program would have been to notify 6 the DEA. 7 Q. (BY MR. BOWER) And that's true 8 in January of 2008; correct? 9 A. Yes. 10 Q. Okay. And in January 2008, 11 would Walmart have reported to the DEA an 12 order that deviated substantially from a 13 normal size? 14 MS. TABACCHI: Object to the 15 form. 16 MR. BOWER: I'll strike that. 17 Q. (BY MR. BOWER) Does Walmart 18 agree that in January of 2008, it was 19 obligated to report to the DEA orders that 20 deviated from a normal size? 21 MS. TABACCHI: Object to the 22 form. Calls for a legal conclusion. 23 THE WITNESS: Yes. Orders 24 deviating from -- I'm sorry. I --</p>	<p style="text-align: right;">Page 137</p> <p>1 that order suspicious, we would have 2 contacted the DEA, notified the DEA. 3 Q. (BY MR. BOWER) So is it a true 4 statement that in January 2008, Walmart would 5 only contact the DEA for an order that it 6 determined was an unusual size if it could 7 not explain the reason for the size? 8 MS. TABACCHI: Object to the 9 form. 10 THE WITNESS: Our policies and 11 procedures incorporated an evaluation 12 of the order for many -- across the 13 circumstances of the order. 14 So there were several factors 15 that went into play. 16 Q. (BY MR. BOWER) Okay. And 17 we'll get back to those specific programs in 18 a bit. Let's just finish with this letter 19 while we have it in front of us. 20 Can we look for a moment at 21 that last sentence on that first page? 22 And I'll just read it for the 23 record. "The determination of whether an 24 order is suspicious depends not only on the</p>

<p style="text-align: right;">Page 138</p> <p>1 ordering pattern of the particular customer, 2 but also on the patterns of the registrant's 3 customer base and the patterns throughout the 4 relevant segment of the regulated industry." 5 Do you see that? 6 A. Yes, I see that. 7 Q. Did Walmart's policies and 8 procedures as of January 2008 take into 9 account this criteria as defined here by 10 Mr. Rannazzisi that I just read? 11 MS. TABACCHI: Object to the 12 form. 13 THE WITNESS: So our policies 14 and procedures were developed with our 15 understanding of what we were required 16 to -- our -- the obligations that we 17 had under the Controlled Substances 18 Act, in conversation with DEA agents 19 throughout the entirety of our 20 distribution of controlled substances. 21 Q. (BY MR. BOWER) Now, is it 22 Walmart's position that those conversations 23 somehow superseded this communication from 24 Mr. Rannazzisi?</p>	<p style="text-align: right;">Page 140</p> <p>1 the DEA. 2 Q. (BY MR. BOWER) And who, during 3 December of 2007, were you communicating with 4 at the DEA? Who specifically? 5 A. In 2007? 6 MS. TABACCHI: Object to the 7 form. 8 Q. (BY MR. BOWER) Let me strike 9 that. Let me ask a better question. 10 Who specifically in 11 December 2007 were you communicating with at 12 the DEA regarding your suspicious order 13 monitoring program? 14 MS. TABACCHI: Object to the 15 form. 16 THE WITNESS: In 2007, we met 17 with George Gadd and Carolyn Adams. 18 In December of 2007, we met with 19 George Gadd and Carolyn Adams, at our 20 distribution center in Bentonville, 21 Arkansas, and the entire operation 22 would have been open to their review 23 communication. We were working with 24 our contacts in the Little Rock</p>
<p style="text-align: right;">Page 139</p> <p>1 MS. TABACCHI: Object to the 2 form. 3 THE WITNESS: We were working 4 collaboratively with the DEA agents 5 that we had on the ground that were in 6 our buildings and saw our operations. 7 And so as time went on, and our 8 business evolved, our practices 9 evolved, we remained in communication 10 with those DEA agents that were 11 actually in our buildings. 12 Q. (BY MR. BOWER) Okay. But 13 Mr. Rannazzisi is telling you here, right, 14 that Walmart should not rely on 15 communications with the DEA; correct? 16 MS. TABACCHI: Object to the 17 form. 18 Q. (BY MR. BOWER) Do you agree 19 with that? 20 MS. TABACCHI: Mischaracterizes 21 the exhibit. Object to the form. 22 THE WITNESS: We continued to 23 communicate with the DEA. We had a 24 good collaborative relationship with</p>	<p style="text-align: right;">Page 141</p> <p>1 office. 2 Q. (BY MR. BOWER) Did that 3 meeting occur on or before December 27, 2007? 4 A. It was immediately before. 5 Q. Okay. So after that meeting, 6 Walmart received this letter; correct? 7 MS. TABACCHI: Object to the 8 form. 9 THE WITNESS: Yes, that date is 10 after. 11 Q. (BY MR. BOWER) And this letter 12 says that "Past communications with DEA, 13 whether implicit or explicit, that could be 14 construed as approval of a particular system 15 for reporting suspicious orders should no 16 longer be taken to mean that the DEA approves 17 a specific system." 18 Do you see that? 19 MS. TABACCHI: Object to the 20 form. 21 THE WITNESS: I've seen that in 22 the letter. 23 Q. (BY MR. BOWER) Okay. So after 24 receiving this letter, did Walmart still rely</p>

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1 on communications that it had had with the
2 DEA prior to December 2007?
3 MS. TABACCHI: Object to the
4 form.
5 THE WITNESS: No. In fact, we
6 had other follow-up meetings with the
7 DEA after that, as a follow-up to that
8 December audit, that postdated the
9 date of this letter.
10 Q. (BY MR. BOWER) Okay. And if
11 you look back to Exhibit 5, you will see that
12 Mr. Rannazzisi also sent a letter to all
13 registrants in June 2012.
14 Okay. If you could turn to the
15 second-to-the-last page of Exhibit 5.
16 Do you see that? Do you see
17 the date on there, June 12, 2012?
18 A. Yes.
19 Q. Did Walmart receive this
20 letter?
21 MS. TABACCHI: Object to the
22 form. Asked and answered.
23 THE WITNESS: I don't have
24 this -- we don't have this in our

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1 files.
2 MR. BOWER: Can you just read
3 back my question, please? I'd like to
4 ask that question again.
5 I'll just ask it again.
6 Q. (BY MR. BOWER) Did Walmart
7 receive this June 12, 2012 letter?
8 MS. TABACCHI: Object to the
9 form. Asked and answered.
10 THE WITNESS: I don't -- I
11 don't have a copy of this. I haven't
12 seen this.
13 Q. (BY MR. BOWER) Do you disagree
14 that the DEA sent this letter to every entity
15 in the United States who was registered with
16 the Drug Enforcement Administration to
17 manufacture or distribute controlled
18 substances?
19 MS. TABACCHI: Object to the
20 form. Beyond the scope of the notice.
21 Lack of foundation.
22 THE WITNESS: I see that in the
23 heading.
24 Q. (BY MR. BOWER) And during this

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1 time period, Walmart fit that definition;
2 correct?
3 MS. TABACCHI: Object to the
4 form.
5 THE WITNESS: Correct.
6 Q. (BY MR. BOWER) And do you see
7 here, again, if you look at the third
8 paragraph, in the last two sentences there,
9 Mr. Rannazzisi again is reemphasizing the
10 point about reliance of the DEA. He says,
11 "This regulation clearly places the
12 responsibility on the registrant to design
13 and operate such a system. Accordingly, DEA
14 does not approve or otherwise endorse any
15 specific system for reporting suspicious
16 orders."
17 Do you see that?
18 A. I'm sorry, I don't -- I didn't
19 see where you were -- I didn't follow.
20 Q. The first full paragraph there,
21 the paragraph starting "Under federal law"?
22 A. I see that.
23 Q. The last two sentences there.
24 I can read it again if that's

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1 helpful. It starts with "This regulation."
2 And it states, "This regulation clearly
3 places the responsibility on the registrant
4 to design and operate such a system.
5 Accordingly, DEA does not approve or
6 otherwise endorse any specific system for
7 reporting suspicious orders."
8 Do you see that?
9 MS. TABACCHI: Object to the
10 form. Lack of foundation. Beyond the
11 scope of the notice.
12 THE WITNESS: Yes, I see that.
13 Q. (BY MR. BOWER) So if, in fact,
14 Walmart did receive this letter in 2012, then
15 it was again put on notice that it shouldn't
16 rely on its communications with the DEA for
17 approving its program for monitoring orders
18 of controlled substances. Correct?
19 MS. TABACCHI: Object to the
20 form. Calls for a legal conclusion.
21 Improper hypothetical. Beyond the
22 scope of the notice.
23 THE WITNESS: So -- so, again,
24 we weren't relying on them to endorse

<p style="text-align: right;">Page 146</p> <p>1 a specific system. I mean, I can't -- 2 I can't read into what is intended by 3 this. We knew that our responsibility 4 was our own responsibility. And that 5 if there was a program in place, it 6 was ours to develop. 7 We did not rely on the DEA to 8 say, "This system is blessed, move 9 forward." 10 We implemented programs over 11 time, that we had communications with 12 the DEA, and had -- and did not have 13 an indication from them that there 14 were gaps. 15 Q. (BY MR. BOWER) And during this 16 time period from 2006 through and after 2012, 17 Walmart was registered with the DEA to 18 manufacture or distribute controlled 19 substances; correct? 20 MS. TABACCHI: Object to the 21 form. 22 THE WITNESS: Can you state 23 your dates again? I missed the date. 24 Q. (BY MR. BOWER) Sure.</p>	<p style="text-align: right;">Page 148</p> <p>1 Walmart to include an address for the 2 registrant? 3 MS. TABACCHI: Object to the 4 form. Beyond the scope of the notice. 5 Calls for a legal conclusion. 6 THE WITNESS: My understanding 7 is that the registration is issued to 8 the address of business, where the 9 business occurs. 10 Q. (BY MR. BOWER) And you would 11 expect that Walmart would always include the 12 proper address on its registration for 13 DC 6045, wouldn't you? 14 MS. TABACCHI: Object to the 15 form. Beyond the scope of the notice. 16 Calls for a legal conclusion. 17 THE WITNESS: Yes, we would -- 18 yes. 19 Q. (BY MR. BOWER) Is it your 20 testimony today that Walmart didn't receive 21 this June 12th, 2012 letter because it was 22 sent to the wrong address? 23 MS. TABACCHI: Object to the 24 form.</p>
<p style="text-align: right;">Page 147</p> <p>1 Beginning at least as early as January 1st, 2 2006, and through 2012, Walmart was 3 registered with the DEA to manufacture or 4 distribute controlled substances; correct? 5 MS. TABACCHI: Object to the 6 form. Misstates the witness's 7 testimony. 8 MR. BOWER: Well, let me ask 9 it, then. 10 Q. (BY MR. BOWER) Was Walmart 11 registered to distribute controlled 12 substances with the DEA? 13 MS. TABACCHI: Object to the 14 form. Time period. 15 MR. BOWER: Ever. 16 THE WITNESS: Yes. 17 Q. (BY MR. BOWER) During what 18 time period was Walmart registered? 19 A. From the time period at least 20 from 2006 through the time that we ceased 21 distribution in 2018. 22 Q. Okay. And would you expect 23 that -- let me strike that. 24 Does that registration require</p>	<p style="text-align: right;">Page 149</p> <p>1 The letter that was from a 2 different defendant's production? 3 That's what you're asking about? 4 MR. BOWER: No, I'm not. I'm 5 asking whether Walmart did not receive 6 a letter from Mr. Rannazzisi in June 7 of 2012 because it was sent to the 8 wrong address. 9 MS. TABACCHI: Object to the 10 form. Misstates the witness's prior 11 testimony. Beyond the scope of the 12 notice. 13 THE WITNESS: That's not my 14 testimony. I don't know. 15 Q. (BY MR. BOWER) Do you have 16 any -- strike that. 17 What's your basis for saying 18 that Walmart may not have received the 19 June 12th, 2012 letter from Mr. Rannazzisi? 20 MS. TABACCHI: Object to the 21 form. Asked and answered. 22 THE WITNESS: I don't know 23 that. 24 Q. (BY MR. BOWER) Did you ask</p>

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1 anybody at Walmart whether Walmart received
2 the letter?
3 MS. TABACCHI: Object to the
4 form. Asked and answered.
5 THE WITNESS: I wasn't aware of
6 the letter, so I didn't ask about it.
7 MR. BOWER: Okay.
8 Q. (BY MR. BOWER) Did you ever
9 go -- did anyone at Walmart ever go look in
10 the files where the December 2007 letter was
11 found to see if there were other letters in
12 there?
13 MS. TABACCHI: Object to the
14 form.
15 THE WITNESS: Yes.
16 Q. (BY MR. BOWER) And no other
17 letters were found?
18 A. There were no other letters
19 found.
20 Q. Could Walmart have destroyed
21 the June 12, 2012 letter?
22 MS. TABACCHI: Object to the
23 form. Improper speculation. Beyond
24 the scope of the notice.

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1 THE WITNESS: I don't know
2 that.
3 Q. (BY MR. BOWER) Possible,
4 correct?
5 MS. TABACCHI: Object to the
6 form. Beyond the notice.
7 Q. (BY MR. BOWER) I'll rephrase.
8 Is it possible that Walmart
9 destroyed the June 12, 2012 letter from
10 Mr. Rannazzisi?
11 MS. TABACCHI: Object to the
12 form. This is an improper question.
13 Beyond the scope of the notice.
14 THE WITNESS: I don't know that
15 we -- I don't know that we received
16 it, or who would have received it, so
17 I don't know what the disposition of
18 the letter might have been.
19 Q. (BY MR. BOWER) Well, if
20 Walmart did receive it, it's no longer in
21 Walmart's files; correct?
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: We didn't find it

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1 in our files.
2 Q. (BY MR. BOWER) And could one
3 of the reasons you didn't find it be because
4 it was destroyed?
5 MS. TABACCHI: Object to the
6 form.
7 This is -- if this is how you
8 want to use your time, that's fine.
9 We have already made representations
10 to you about what was located in the
11 files.
12 Q. (BY MR. BOWER) And I'm just
13 trying to understand what happened to the
14 letter. Either Walmart --
15 Look. There's a couple of
16 options here. Either Walmart received it and
17 lost it or it never received it. What is
18 another option? Can you tell us another
19 option?
20 MS. TABACCHI: This is beyond
21 the scope of the notice. I disagree
22 that those are the only possible
23 alternatives.
24 This --

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1 Q. (BY MR. BOWER) Do you have any
2 others? Do you have any others that you can
3 provide for us today?
4 MS. TABACCHI: This is beyond
5 the scope of the notice.
6 Q. (BY MR. BOWER) Let me ask you
7 this, then. Let me go back to a question
8 that I think is more appropriate.
9 Does Walmart disagree that the
10 DEA purported to send this letter to every
11 entity in the United States who is registered
12 to distribute controlled substances?
13 MS. TABACCHI: Object to the
14 form.
15 THE WITNESS: I see that in
16 this letter.
17 Q. (BY MR. BOWER) And does
18 Walmart disagree with that statement?
19 MS. TABACCHI: Object to the
20 form. Beyond the scope of the notice.
21 THE WITNESS: I don't disagree
22 with what's stated in the letter.
23 Q. (BY MR. BOWER) So based on
24 that statement, would you assume that Walmart

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1 would have received a copy of this letter?
2 MS. TABACCHI: Object to the
3 form. Beyond the scope.
4 THE WITNESS: We would be
5 included as a registrant to distribute
6 substances during this time frame.
7 Q. (BY MR. BOWER) The answer is
8 yes, you would have assumed that Walmart
9 would receive this letter; correct?
10 MS. TABACCHI: Object to the
11 form. Beyond the scope. Misstates
12 testimony.
13 THE WITNESS: If indeed it was
14 sent to every registrant. We were a
15 registrant during that time period.
16 Q. (BY MR. BOWER) And Walmart
17 isn't today claiming that the letter wasn't
18 sent; isn't that correct?
19 MS. TABACCHI: Object to the
20 form. Asked and answered. Misstates
21 testimony.
22 The testimony has been clear on
23 this issue.
24 MR. BOWER: I don't think it's

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1 been clear at all. Let me ask a
2 clearer -- a different question, then,
3 since you object to that one.
4 Q. (BY MR. BOWER) Does Walmart
5 contend that this letter was never sent to
6 Walmart?
7 MS. TABACCHI: Object to form.
8 Beyond the scope of the notice.
9 Asked and answered.
10 THE WITNESS: No. I just don't
11 know. I don't know where the -- I
12 just don't know.
13 Q. (BY MR. BOWER) Okay. So as you
14 sit here today, we don't know whether Walmart
15 ever received this letter, and we don't know
16 whether Walmart ever maintained this letter;
17 is that correct?
18 MS. TABACCHI: Object to the
19 form. Beyond the scope.
20 THE WITNESS: If the letter was
21 received, we did not find it in our
22 files.
23 Q. (BY MR. BOWER) Does Walmart
24 have a policy to catalog DEA communications

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1 by registrant number?
2 MS. TABACCHI: Object to the
3 form.
4 THE WITNESS: No.
5 Q. (BY MR. BOWER) Would Walmart
6 want to have all communications from the DEA
7 regarding a specific registration?
8 MS. TABACCHI: I'm sorry, did
9 you finish with the question?
10 MR. BOWER: Yeah.
11 MS. TABACCHI: Object to the
12 form. Beyond the scope of the notice.
13 THE WITNESS: Communication
14 that was appropriate and current to
15 the business would be important for us
16 to be aware of, yes.
17 Q. (BY MR. BOWER) Would you agree
18 that if Walmart had received this June 2012
19 letter, that it would be important to
20 Walmart's business for distributing
21 controlled substances?
22 MS. TABACCHI: Object to the
23 form. Beyond the scope.
24 THE WITNESS: We would hold

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1 that any information from the DEA is
2 important.
3 Q. (BY MR. BOWER) Do you agree
4 that Walmart should maintain communications
5 from the DEA in its records?
6 MS. TABACCHI: Object to the
7 form.
8 THE WITNESS: Again, we -- I --
9 we have filing obligations around
10 records specific to our registration.
11 And so to the extent that it was
12 current and within the -- and required
13 for us to maintain, those would be
14 part of our policies for maintaining
15 records of information required by the
16 DEA.
17 Q. (BY MR. BOWER) Okay. Let's
18 turn back. Just a few more questions on the
19 December 27, 2007 letter, then.
20 If you could turn to the second
21 page, the top of page 2.
22 A. I'm sorry, I've lost my copy.
23 Here. I have it.
24 Q. So I'm just looking at the top

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1 of page 2. Are you there?
2 A. Yes.
3 Q. It says, "Registrants that rely
4 on rigid formulas to define whether an order
5 is suspicious may be failing to detect
6 suspicious orders."
7 Do you see that?
8 A. Yes.
9 Q. Would you agree that if Walmart
10 did rely on a rigid formula, that it would be
11 a violation of the CSA?
12 MS. TABACCHI: Object to the
13 form. Calls for a legal conclusion.
14 Beyond the scope of the notice.
15 THE WITNESS: So I see that
16 this says "may be failing to detect."
17 So again, I think it's circumstantial
18 as to if a rigid formula was your only
19 means, that you may fail to detect,
20 which is one of the responsibilities.
21 But I don't know that -- I think it's
22 circumstantial at this point. There's
23 more information needed.
24 MS. TABACCHI: Zach, whenever

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1 you're at a good point.
2 MR. BOWER: Let's just finish
3 this. A couple more questions and
4 then take a break.
5 Q. (BY MR. BOWER) The next
6 sentence gives you an example, right, about a
7 rigid formula? It says, "For example, a
8 system that identifies orders as suspicious
9 only if the total amount of a controlled
10 substance ordered during the one month
11 exceeds the amount ordered the previous month
12 by a certain percentage or more is
13 insufficient."
14 Do you see that?
15 A. Yes.
16 Q. Did Walmart's policies and
17 procedures during this time period, let's say
18 January 2008, take into consideration that
19 requirement by Mr. Rannazzisi?
20 MS. TABACCHI: Object to the
21 form. Calls for a legal conclusion.
22 Improper characterization.
23 THE WITNESS: Our programs
24 included reporting as well as

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1 follow-up on different aspects of
2 the -- of the orders that we were
3 reviewing.
4 So I -- I see that this says --
5 is an example of what would be
6 considered insufficient, but that
7 wasn't the -- that wasn't our program.
8 And it wasn't -- the reports that we
9 were using were not our total program.
10 Q. (BY MR. BOWER) And would you
11 agree, though, that if Walmart was using
12 rigid formulas, that that program would
13 entail some risk?
14 MS. TABACCHI: Object to the
15 form.
16 THE WITNESS: So this says
17 "rigid formulas may fail to detect."
18 And so it would be incumbent upon us
19 to ensure that whatever formulas or
20 processes that we have in place were
21 effective in detecting any issues.
22 Q. (BY MR. BOWER) So is it
23 Walmart's position that a program that used a
24 rigid formula would also have to have other

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1 criteria with which to consider whether an
2 order was suspicious or not?
3 MS. TABACCHI: Object to the
4 form. Beyond the scope of the notice,
5 improper hypothetical and beyond --
6 and legal conclusion.
7 THE WITNESS: Can you repeat
8 the question?
9 MR. BOWER: Okay. So we've
10 been going a long time. Not today.
11 I've been pretty consistent allowing
12 those objections. You've taken a lot
13 of time on the record. I would ask
14 again just to please object to form.
15 When you do so, the witness then asks
16 me to rephrase the question and we
17 waste more time on the record.
18 So I'm just going to keep
19 making that request and you can ignore
20 it if you want.
21 Q. (BY MR. BOWER) So the question
22 is, going back to this time period,
23 January 2008, if Walmart had used rigid
24 formulas to detect orders that were

<p style="text-align: right;">Page 162</p> <p>1 potentially suspicious, would you agree that</p> <p>2 it would need other criteria with which to</p> <p>3 also review those orders?</p> <p>4 MS. TABACCHI: Same objections.</p> <p>5 THE WITNESS: So to the extent</p> <p>6 there was -- there was a rigid formula</p> <p>7 in place, and according to this</p> <p>8 letter, that may fail to detect. It's</p> <p>9 not an absolute. Even according to</p> <p>10 this letter. So I'd have to have a</p> <p>11 specific order to review to see if a</p> <p>12 formula that was applied actually</p> <p>13 needed something else behind it.</p> <p>14 Q. (BY MR. BOWER) So in order to</p> <p>15 answer that question, you'd want to review a</p> <p>16 specific order from January 2008; is that</p> <p>17 correct?</p> <p>18 MS. TABACCHI: Object to the</p> <p>19 form.</p> <p>20 THE WITNESS: I'd want to</p> <p>21 understand what is entailed in the</p> <p>22 rigid formula. It's hypothetical, so</p> <p>23 I -- it's difficult for me to comment.</p> <p>24 MR. BOWER: Okay. Why don't we</p>	<p style="text-align: right;">Page 164</p> <p>1 corporate office is correct.</p> <p>2 Q. (BY MR. BOWER) Okay. And do</p> <p>3 you have any basis for that statement that it</p> <p>4 may have caused confusion?</p> <p>5 MS. TABACCHI: Object to the</p> <p>6 form.</p> <p>7 Q. (BY MR. BOWER) For example,</p> <p>8 did you talk to anybody that suggests in your</p> <p>9 mind that it caused confusion or anything</p> <p>10 like that?</p> <p>11 A. It confused me when I saw it.</p> <p>12 That's the basis for that statement.</p> <p>13 Q. And why did it confuse you?</p> <p>14 A. Because we don't have a</p> <p>15 warehouse at that address. So there's no</p> <p>16 registrant specifically at that address.</p> <p>17 Q. Do you know whether this is the</p> <p>18 address that Walmart uses for its DC 6045</p> <p>19 registration?</p> <p>20 MS. TABACCHI: Object to the</p> <p>21 form. Beyond the scope of the notice.</p> <p>22 THE WITNESS: I don't know</p> <p>23 that.</p> <p>24 MR. BOWER: You can put that</p>
<p style="text-align: right;">Page 163</p> <p>1 take a break and then we'll do what</p> <p>2 you just asked to do. Okay?</p> <p>3 THE VIDEOGRAPHER: 10:46. We</p> <p>4 are off the video record.</p> <p>5 (Recess taken, 10:46 a.m. to</p> <p>6 11:08 a.m.)</p> <p>7 THE VIDEOGRAPHER: 11:09. We</p> <p>8 are on the video record.</p> <p>9 Q. (BY MR. BOWER) Okay.</p> <p>10 Ms. Hiland, we're back on the record. I just</p> <p>11 have a couple more, very quick questions on</p> <p>12 Exhibit 6, which is the Walmart letter.</p> <p>13 The address here, is that the</p> <p>14 correct address?</p> <p>15 MS. TABACCHI: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: There is -- so my</p> <p>18 earlier comment was, this is the</p> <p>19 correct address for the corporate</p> <p>20 office. We don't have a warehouse</p> <p>21 there. So it may have caused some</p> <p>22 confusion when it arrived. There was</p> <p>23 just a -- it was just a statement.</p> <p>24 But the physical address for the</p>	<p style="text-align: right;">Page 165</p> <p>1 one aside for a moment, and we're</p> <p>2 going to hand you a composite exhibit</p> <p>3 which has been marked Exhibit 7.</p> <p>4 (Whereupon, Deposition Exhibit</p> <p>5 Walmart 7, Tab 1 Walmart Responses to</p> <p>6 Plaintiffs' (First) Combined Discovery</p> <p>7 Requests to National Retail Pharmacies</p> <p>8 Defendants, Tab A</p> <p>9 WMT_MDL_000044441-44499, Tab B</p> <p>10 WMT_MDL_000009423-9424, Tab C</p> <p>11 WMT_MDL_000053813-53815, Tab D</p> <p>12 WMT_MDL_0000 43316-43373, Tab 2</p> <p>13 WMT_MDL_000011106, Tab 3</p> <p>14 WMT_MDL_000011107-11109, Tab 4</p> <p>15 WMT_MDL_000000963-965, Tab 5</p> <p>16 WMT_MDL_000000966-968, Tab 6</p> <p>17 WMT_MDL_000000969-971, Tab 7</p> <p>18 WMT_MDL_000008377-8379, Tab 8</p> <p>19 WMT_MDL_0000004237-4239, Tab 9</p> <p>20 WMT_MDL_000004781-4783, was marked for</p> <p>21 identification.)</p> <p>22 Q. (BY MR. BOWER) So please take</p> <p>23 a moment and review Exhibit 7. I imagine it</p> <p>24 somewhat overlaps with the documents you have</p>

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1 in your binder, but Exhibit 7 is Walmart's
 2 responses to plaintiffs' combined discovery
 3 requests.
 4 A copy of that, and then the
 5 exhibits, A, B, C, are just the documents
 6 referenced therein.
 7 So if you see -- just to orient
 8 you, right? -- the Walmart -- the third page
 9 of Walmart's responses provides examples of
 10 additional policies and references document
 11 numbers with Bates numbers.
 12 A. Yes.
 13 Q. Okay. So those -- so tabs A,
 14 B, and C are just simply those Bates number
 15 documents.
 16 MS. TABACCHI: Wait. I'm
 17 sorry.
 18 Q. (BY MR. BOWER) So, sorry. So
 19 if you look at --
 20 MS. TABACCHI: What page are
 21 you on?
 22 MR. BOWER: So if you look at
 23 the page -- the fourth page of
 24 Walmart's responses which are the

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1 additional policies and practices in
 2 bullet point form.
 3 Okay.
 4 MS. TABACCHI: Yes.
 5 MR. BOWER: Are you with me?
 6 MS. TABACCHI: Yes. And I'm
 7 sorry. There's no page number.
 8 Q. (BY MR. BOWER) You see it
 9 references to -- second bullet point has a
 10 document reference, fifth bullet point has a
 11 document reference. And then the
 12 second-to-the-last has a document reference.
 13 Those are the Bates numbers of the documents
 14 in tabs A, B, and C. Okay?
 15 And then, tab D is just another
 16 example, in case there was any confusion. I
 17 just wanted to make sure we were all on the
 18 same page regarding what these reports are.
 19 So Exhibit D --
 20 MS. TABACCHI: I'm sorry, what
 21 are you saying tab D is?
 22 MR. BOWER: Tab D is another --
 23 I believe -- I'm going to ask her what
 24 it is. But I believe it's another

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1 example of a controlled drug stock
 2 exception report.
 3 And then, the rest of the tabs
 4 are simply the policies reflected on
 5 the previous page.
 6 Okay?
 7 So take another moment,
 8 familiarize yourself with that. And
 9 then we can start. What I'm going to
 10 do with this is I want to walk
 11 through, year by year, what Walmart's
 12 policies were starting in 2006. Okay?
 13 And give you this to refer to. And
 14 I'm sure you may also refer to your
 15 binder as well.
 16 MS. TABACCHI: Yes.
 17 MR. BOWER: Okay?
 18 So why don't we get started and
 19 then you can refer to it as needed.
 20 Does that make sense?
 21 THE WITNESS: Yes.
 22 MR. BOWER: Or do you want a
 23 minute to review it?
 24 THE WITNESS: No.

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1 MS. TABACCHI: So you're not
 2 asking her questions about this. This
 3 is just for her reference?
 4 MR. BOWER: Yes. And I'm going
 5 to have specific questions on it, I
 6 believe. But yes, it's mostly for her
 7 reference and to confirm what's
 8 written here.
 9 Q. (BY MR. BOWER) So the first
 10 question would be what were Walmart's
 11 policies and procedures in place in 2006, to
 12 monitor for orders of controlled substances?
 13 A. So the policies that we had in
 14 2006 included work that the associates in the
 15 distribution center themselves would do based
 16 on monitoring orders.
 17 We were running -- and so -- so
 18 as to those orders, if an order was
 19 identified, they would alert a manager, and a
 20 manager would work with the operations
 21 leadership to determine the reason for that.
 22 Q. Now, if you look at Walmart's
 23 responses to the combined discovery requests,
 24 on page 4, the first bullet point, is that

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1 the policy you're referring to? Where it
2 says "From as early as 1994 until 2010,
3 employees in Walmart's pharmacy distribution
4 centers reviewed controlled drug stock
5 exception reports, followed up on orders by
6 speaking with pharmacists, and escalated
7 issues to market and/or regional leadership
8 as needed to investigate orders and to
9 resolve concerns."
10 Is that the policy you're
11 referring to?
12 A. Yes. As well as the bullet
13 that's at the very bottom of the page. So
14 I'm on my document that, for the entire
15 relevant time period, our distribution
16 associates monitored orders.
17 Q. Okay. Now, let's go in 2006,
18 what specifically were the associates doing
19 to monitor orders?
20 MS. TABACCHI: Object to the
21 form.
22 THE WITNESS: They were
23 monitoring orders as they came into
24 the distribution center, and again

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1 based on their knowledge and
2 experience of the operations. They
3 were looking for outliers. Things
4 that were outliers for them -- for
5 their knowledge.
6 Q. (BY MR. BOWER) Okay. And
7 during this time period in 2006, Walmart had
8 approximately 4,000 pharmacies; is that
9 correct?
10 MS. TABACCHI: Object to the
11 form. Beyond the scope.
12 THE WITNESS: That's
13 approximate.
14 Q. (BY MR. BOWER) Sounds about
15 right?
16 A. Sounds good.
17 Q. And those pharmacies would be
18 placing orders once a week; correct?
19 A. They had the ability to place
20 orders once a week. Not every pharmacy
21 ordered every week.
22 Q. Okay. And those orders that
23 came in could be for multiple products;
24 correct?

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1 MS. TABACCHI: Object to the
2 form.
3 THE WITNESS: Correct.
4 Q. (BY MR. BOWER) Could be for
5 numerous products; correct?
6 A. Correct.
7 Q. And was -- these associates
8 were reviewing each one of those orders for
9 whether the order was unusual size; is that
10 correct?
11 MS. TABACCHI: Object to the
12 form.
13 THE WITNESS: What they were
14 doing was ordering -- monitoring the
15 orders as they came in, because they
16 were creating the 222 forms, as well
17 as other associates within the
18 building were filling those orders.
19 And so they had -- they had knowledge
20 of normal pattern as well.
21 Q. (BY MR. BOWER) Okay. But my
22 question is, were -- were the associates who
23 were in charge of this in 2006 reviewing each
24 order as it came in?

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1 MS. TABACCHI: Object to the
2 form.
3 Q. (BY MR. BOWER) And let me make
4 it more specific.
5 At DC 6045 in 2006, were these
6 associates that you're referring to reviewing
7 each order as they came in?
8 MS. TABACCHI: Object to the
9 form.
10 THE WITNESS: They were working
11 with each order. They certainly
12 touched each order as they came in.
13 And our policy was set up so that our
14 practices and policies would detect if
15 there was something outside of the
16 normal pattern. So they -- they
17 were -- they were touching, handling
18 every order that came through.
19 Q. (BY MR. BOWER) And were they
20 reviewing each order that came through for
21 whether it was unusual size --
22 MS. TABACCHI: Object to the
23 form.
24 Q. (BY MR. BOWER) -- in 2006 in

<p style="text-align: right;">Page 174</p> <p>1 DC 6045?</p> <p>2 A. Within the scope of their</p> <p>3 normal work, they were looking at each order.</p> <p>4 Q. And approximately how many</p> <p>5 items would have been ordered for each --</p> <p>6 during this time period, each day?</p> <p>7 MS. TABACCHI: Object to the</p> <p>8 form. Beyond the scope of the notice.</p> <p>9 THE WITNESS: I don't have that</p> <p>10 number.</p> <p>11 Q. (BY MR. BOWER) Well, we have</p> <p>12 approximately 4,000 pharmacies; right?</p> <p>13 A. Yes.</p> <p>14 Q. Potentially ten items for each</p> <p>15 pharmacy? Could have been more, right?</p> <p>16 MS. TABACCHI: Object to the</p> <p>17 form. Improper hypothetical. Beyond</p> <p>18 the scope.</p> <p>19 THE WITNESS: Could have been</p> <p>20 less. Could have been anything from</p> <p>21 one to more.</p> <p>22 Q. (BY MR. BOWER) Could have been</p> <p>23 anything from one to more than 20; right?</p> <p>24 MS. TABACCHI: Object to the</p>	<p style="text-align: right;">Page 176</p> <p>1 what their responsibilities were.</p> <p>2 Q. (BY MR. BOWER) So we have</p> <p>3 approximately 4,000 pharmacies with</p> <p>4 potentially 20 items of controlled substances</p> <p>5 for each pharmacy; right?</p> <p>6 MS. TABACCHI: Object to the</p> <p>7 form. Misstates the testimony.</p> <p>8 Beyond the scope of the notice.</p> <p>9 THE WITNESS: That's a</p> <p>10 hypothetical.</p> <p>11 Q. (BY MR. BOWER) So would you</p> <p>12 agree that the DC likely received more than</p> <p>13 4,000 orders on an item basis each week?</p> <p>14 MS. TABACCHI: Object to the</p> <p>15 form. Beyond the scope.</p> <p>16 THE WITNESS: That -- it's</p> <p>17 possible. It's possible.</p> <p>18 Q. (BY MR. BOWER) And how many</p> <p>19 associates were reviewing the orders during</p> <p>20 this time period in 2006?</p> <p>21 MS. TABACCHI: Same objections.</p> <p>22 THE WITNESS: We had a team of</p> <p>23 order reviewers, and -- as well as a</p> <p>24 team that was picking the number of</p>
<p style="text-align: right;">Page 175</p> <p>1 form. Beyond the scope.</p> <p>2 THE WITNESS: It's a</p> <p>3 hypothetical.</p> <p>4 Q. (BY MR. BOWER) Well, how many</p> <p>5 controlled substances was DC 6045</p> <p>6 distributing in 2006?</p> <p>7 MS. TABACCHI: Object to the</p> <p>8 form. Beyond the scope.</p> <p>9 THE WITNESS: I don't have that</p> <p>10 production number.</p> <p>11 Q. (BY MR. BOWER) Well, in order</p> <p>12 to tell me, right, whether -- the process for</p> <p>13 order monitoring, wouldn't you have to know</p> <p>14 how many orders were being monitored?</p> <p>15 MS. TABACCHI: Object to the</p> <p>16 form. Beyond the scope.</p> <p>17 THE WITNESS: Every order that</p> <p>18 came in was subject to the practices</p> <p>19 and policies of the distribution</p> <p>20 center. So whether it was one or it</p> <p>21 was more, our obligation was the same.</p> <p>22 Our policy applied exactly the same</p> <p>23 across all of those orders, and those</p> <p>24 associates took ownership and knew</p>	<p style="text-align: right;">Page 177</p> <p>1 associates.</p> <p>2 Q. (BY MR. BOWER) What do you</p> <p>3 mean by "picking the number of associates"?</p> <p>4 What does that mean?</p> <p>5 A. Picking orders. I didn't -- I</p> <p>6 didn't complete my sentence.</p> <p>7 Q. Okay. Sorry.</p> <p>8 A. Picking orders.</p> <p>9 Q. Okay.</p> <p>10 A. So I -- I believe we produced</p> <p>11 org charts that show the number of associates</p> <p>12 that were in -- within the distribution</p> <p>13 center.</p> <p>14 Q. During -- in January 2006, how</p> <p>15 many associates at DC 6045 were responsible</p> <p>16 for reviewing orders to determine whether</p> <p>17 they were for unusual size?</p> <p>18 MS. TABACCHI: Object to the</p> <p>19 form.</p> <p>20 THE WITNESS: I don't have the</p> <p>21 org charts. That's not one of the</p> <p>22 documents that I placed in my binder</p> <p>23 to help me remember. But I know I did</p> <p>24 review that in one of the depositions.</p>

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1 Q. (BY MR. BOWER) Would you agree
2 that Walmart would have had to have numerous
3 associates reviewing each order in order to
4 ensure that a specific order didn't deviate
5 from an unusual pattern?
6 MS. TABACCHI: Object to the
7 form. Beyond the scope of the notice.
8 THE WITNESS: I don't agree
9 with that. There's no standard for
10 the number of people to review an
11 order. We had policies and practices
12 in place so that we could -- we could
13 detect those orders and fulfill our
14 obligations.
15 Q. (BY MR. BOWER) Okay. So in
16 January 2006, okay --
17 A. Yes.
18 Q. -- we have associates at
19 DC 6045 reviewing orders for controlled
20 substances; correct?
21 A. Correct.
22 Q. And what specifically were they
23 looking for?
24 A. They were looking for

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1 variations from their experience in that
2 facility that would indicate that there may
3 be something that needed to be reviewed about
4 that order.
5 Q. So, for example, if they were
6 reviewing an order to determine whether it
7 represented unusual pattern, what would they
8 look at?
9 A. So again, one of the -- one of
10 the practices, our policy at Walmart around
11 the ordering of medications through that
12 distribution center, was there were set days
13 that each pharmacy was assigned.
14 So if a manual order was
15 placed, which it would have had to have been
16 a manual order coming in, that type of order
17 outside of their normal ordering pattern
18 would have been reviewed by the management of
19 the distribution center.
20 Q. So was it Walmart's policy,
21 procedure in January 2006 that only manual
22 orders were reviewed for whether they were an
23 unusual pattern?
24 MS. TABACCHI: Object to the

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1 form. Misstates testimony.
2 THE WITNESS: No.
3 Q. (BY MR. BOWER) Okay. What is
4 incorrect about my statement?
5 A. There were other reviews that
6 were conducted that included reaching out to
7 the pharmacy associates, reaching out to
8 field leadership. There were -- there were
9 many reviews that were occurring
10 collaboratively between our logistics team,
11 our operations team. Those reviews were all
12 part of how we were fulfilling our
13 obligations.
14 Q. (BY MR. BOWER) Who on the
15 logistics team was responsible for reviewing
16 orders for unusual pattern in January 2006?
17 MS. TABACCHI: Object to the
18 form.
19 THE WITNESS: The associates in
20 the distribution center, as well as
21 the management of the distribution
22 center, were involved in those types
23 of reviews.
24 Q. (BY MR. BOWER) And did you

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1 know their names? Who were those people
2 doing it in 2000?
3 A. I don't know all of their
4 names. I know that they're listed on org
5 charts that have been produced.
6 The management in those
7 distribution centers, I do have, and I can
8 refer to.
9 Q. Are you referring to
10 Mike Mullins?
11 A. Mike Mullins was there.
12 In 2006? I believe Jim Greer
13 was there for part of 2006.
14 And Jim Sherl was there as
15 well. Those are some. There may have been
16 others.
17 Q. And those three individuals
18 were responsible for what in connection with
19 Walmart's suspicious order monitoring program
20 in 2006?
21 A. They were the management team,
22 part of the management team at that
23 distribution center. So as an order was
24 alerted, they were the ones that were working

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1 through whether or not there was anything to
2 be concerned with about that order, whether
3 or not they could deem it appropriate or
4 determine that it was suspicious and then
5 needed follow-up.
6 Q. Okay. So the management folks
7 would only review an order if it was alerted
8 to them; is that correct?
9 MS. TABACCHI: Object to the
10 form.
11 THE WITNESS: In the 2006 time
12 frame, our process was that our
13 associates were reviewing orders.
14 They were also reviewing reports that
15 were generated so they would become
16 familiar with patterns and stores in
17 that way as well.
18 Q. (BY MR. BOWER) And we'll talk
19 about those reports in a moment, but I just
20 want to clarify a couple of things on what
21 the associates were doing.
22 Are these hourly associates
23 you're referring to?
24 MS. TABACCHI: Objection, form.

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1 THE WITNESS: Some of them were
2 hourly associates.
3 Q. (BY MR. BOWER) Were there
4 any -- strike that.
5 Were there some that were not
6 hourly associates?
7 A. Yes.
8 Q. In 2006?
9 A. Yes.
10 Q. Okay. What positions were
11 those?
12 A. Those would have been the
13 office management team, as well as the
14 managers that were within the building.
15 Q. Well, I'm asking now
16 specifically about the first-level review.
17 Okay? Before -- in 2006, before they're sent
18 to Mr. Mullins and Mr. Sherl. Who was doing
19 the first-level review of orders other than
20 hourly associates?
21 MS. TABACCHI: Object to the
22 form.
23 THE WITNESS: So this was a --
24 it's a small distribution center.

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1 They all worked interactively. Their
2 communication was across the
3 production day. And so there were
4 managers that were involved as they
5 were generating. There were managers
6 involved as the orders were picking.
7 There were managers involved with
8 security and access.
9 There were -- those managers
10 were involved in the total operation.
11 The first touch might have been
12 those hourly associates, but
13 management was involved as well in the
14 operation of -- of orders as they were
15 processed every day.
16 Q. (BY MR. BOWER) Under what
17 circumstances would one of the associates
18 bring in a manager to review an order in 2006
19 at DC 6045?
20 A. One of the common issues that
21 was reported to me was pharmacists would
22 sometimes, if they were -- if they were
23 manually ordering, they would enter the wrong
24 quantity. They were ordering tablets instead

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1 of bottles.
2 So 100 tablets might have
3 transposed to 100 bottles. And that was one
4 that the associates knew was an error.
5 There were other times when
6 there might be some system issue, that the
7 associates would alert and say, you know,
8 this -- this order doesn't appear to be
9 right, and so they'd go back in and make sure
10 that there hadn't been some system issue that
11 generated a problem.
12 While they were -- other
13 times -- I think Jeff Abernathy testified to
14 these -- some of these processes. Associates
15 on the line would be filling orders, and they
16 would notice that they were picking a certain
17 amount of orders consistently, and then the
18 next order that they were picking might be
19 something that was out of that pattern of how
20 they had been picking. It might have been a
21 larger order. And so they would alert at
22 that time as well.
23 Q. Well, in that example you just
24 gave, when they would be filling orders and

<p style="text-align: right;">Page 186</p> <p>1 they would notice they were picking a certain 2 amount of orders consistently, and then the 3 next order they were picking might be 4 something that was out of the pattern -- what 5 do you mean by "pattern"? Pattern of 6 ordering from different stores or from the 7 same store? 8 A. From different stores. They -- 9 from different stores of what they had 10 previously picked. 11 Q. Okay. During this time period, 12 were the Walmart associates who were 13 reviewing orders for controlled substances at 14 DC 6045 considering that order history from 15 the particular stores when reviewing that 16 store's order? 17 A. That responsibility fell to the 18 management team that then went and 19 investigated and followed up when those types 20 of alerts were raised. 21 Q. So the management team would 22 only follow up on those if the order had been 23 raised to them; is that correct? During this 24 time period?</p>	<p style="text-align: right;">Page 188</p> <p>1 information that would be reviewed 2 when an order was flagged, and then 3 reviewed -- flagged and then reviewed 4 by the team to determine whether or 5 not there was a concern. 6 Q. (BY MR. BOWER) Well, let me 7 ask it a different way. Perhaps that was a 8 poor question. 9 When did Walmart start 10 considering a store's past orders when 11 reviewing its orders for controlled 12 substances? 13 A. So in the -- in the pattern 14 of -- in reviewing how an order -- in the 15 process of reviewing an order, communications 16 with a market director, with the store 17 itself, and reports that were being pulled 18 and filed on a regular basis, those all 19 were -- those all were past history. 20 Q. Well, let's go back to 21 January 2006. An order comes in from a store 22 in Ohio for ten orders of -- for ten orders 23 of oxy 5, ten bottles. Okay? 24 Are you with me?</p>
<p style="text-align: right;">Page 187</p> <p>1 MS. TABACCHI: Object to the 2 form. 3 THE WITNESS: So the 4 circumstance of how the alert would be 5 raised to them would be what they 6 would follow up on. If there was 7 something that triggered in the 8 process that seemed to be an outlier 9 to the associates. 10 Q. (BY MR. BOWER) Well, but my 11 question is a little different. My question 12 is, in reviewing these daily orders, were the 13 associates who were reviewing the orders 14 considering the past orders from those same 15 stores? 16 A. Not at that time. That wasn't 17 part of their data set. 18 Q. Okay. Do you know when Walmart 19 started reviewing that information in the 20 context of reviewing orders for controlled 21 substances? 22 MS. TABACCHI: Objection, form. 23 THE WITNESS: So there were a 24 variety of data that would be -- or</p>	<p style="text-align: right;">Page 189</p> <p>1 MS. TABACCHI: Hypothetical. 2 THE WITNESS: In this 3 hypothetical? 4 MR. BOWER: Yeah. 5 THE WITNESS: Ten orders of -- 6 Q. (BY MR. BOWER) Let's not make a 7 hypothetical. Let's turn to Exhibit A. 8 Okay? 9 10 MS. FUMERTON: This is 11 Exhibit A within 7. 12 MR. BOWER: Yes. Thank you. 13 Q. (BY MR. BOWER) So Exhibit A 14 is -- do you see the first Bates number there 15 is ending in 4441? 16 A. Yes. 17 Q. And the last number, just for 18 the record -- it's a lengthy document -- the 19 last number is 44499. Okay? 20 And what's the name of the 21 document referenced on Exhibit A? If you 22 know. 23 A. On Exhibit A, we referred to 24 this as the "405."</p>

<p style="text-align: right;">Page 190</p> <p>1 Q. Okay. It's also -- is that 2 different than a controlled drug stock 3 exception report? 4 A. Yeah. That -- that is -- 5 Q. Okay. 6 A. -- the same. 7 The title is "Controlled drug 8 stock exception report" and the report number 9 is 405. 10 Q. So in Walmart terminology, 11 though, is it the same thing? Is that 12 correct? 13 A. It is the same, yes. 14 Q. Okay. So let's look at some of 15 these orders, then. Would you agree that 16 this document reflects orders for particular 17 items from particular stores? 18 MS. TABACCHI: Object to the 19 form. 20 What portion of the document 21 are you -- 22 MR. BOWER: Well, yeah. That's 23 a good point. Let's look at a 24 specific page. Okay?</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. (BY MR. BOWER) And do you see 2 the number 1 there, in "Rank" -- under the 3 "Rank" column? Do you see that? 4 A. Yes. 5 Q. If you read -- if you go across 6 there, does that information reflect that 7 store's order for that product? 8 MS. TABACCHI: Object to the 9 form. 10 THE WITNESS: So this is the 11 aggregate purchase for this item for 12 the month of August of 2007. 13 Q. (BY MR. BOWER) For this store; 14 correct? 15 A. Yes. 16 Q. So this store in Garfield 17 Heights, Ohio, purchased 8,000 dosage units 18 of this product during that month; correct? 19 A. Correct. 20 Q. Okay. During this time period; 21 right? This is 2007; correct? 22 A. Yes. 23 Q. What would the Walmart 24 associates at DC 6045 have reviewed in</p>
<p style="text-align: right;">Page 191</p> <p>1 Let's -- let me find a good 2 example here. Let's turn to page 3 Bates ending in 44487. 4 Okay? Are you with me? 5 THE WITNESS: Yes. 6 Q. (BY MR. BOWER) Okay. And let's 7 look at -- just let's start with the bottom 8 drug there. It's item No. 003880917. 9 Do you see that? 10 A. Yes. 11 Q. And the drug is OxyContin? Do 12 you see that? 13 A. Oxycodone with acetaminophen. 14 Q. Oxycodone. Right? 15 A. Yes. 16 Q. 5 milligrams; right? 17 A. Yes. 18 Q. And the size of that product is 19 500 bottles? The unit size? 20 A. Yes. 21 Q. 500 units per bottle; correct? 22 MS. TABACCHI: Object to the 23 form. 24 THE WITNESS: Correct.</p>	<p style="text-align: right;">Page 193</p> <p>1 connection with this order to determine 2 whether it was an unusual size? 3 MS. TABACCHI: Object to the 4 form. Misstates testimony. 5 THE WITNESS: If in the process 6 they had determined -- so again, this 7 is an aggregate. This is a month's 8 aggregate orders. 9 And so in the process of 10 filling those orders, if a flag had 11 been detected because of a pattern 12 size flag of concern to the 13 associates, it would have been passed 14 to management to follow up on with the 15 store or with their operations 16 leadership responsible for that 17 location. 18 Q. (BY MR. BOWER) Okay. And I'm 19 just trying to get a little more specificity. 20 So -- and I'm just giving you 21 one example of one store. And this is -- 22 you're right, this is monthly. So this -- 23 the average monthly dosage for the store 24 would have been approximately 2,000 dosages</p>

<p style="text-align: right;">Page 194</p> <p>1 per week; right? Four weeks in a month? I 2 mean, right? One order per week? 3 MS. TABACCHI: Object to the 4 form. 5 THE WITNESS: That would be an 6 average, 2000. 7 Q. (BY MR. BOWER) Right. 8 So let me ask it again, then. 9 What -- who was reviewing these orders during 10 this time period? 11 MS. TABACCHI: Object to the 12 form. 13 THE WITNESS: So again, the -- 14 can you clarify these orders as it 15 relates to this report? Or the order 16 itself. 17 Q. (BY MR. BOWER) The order 18 itself. So who is reviewing orders from 19 Store 3326, the weekly orders, during this 20 time period? 21 MS. TABACCHI: Object to the 22 form. Beyond the scope of the notice. 23 THE WITNESS: The distribution 24 center associates would be processing</p>	<p style="text-align: right;">Page 196</p> <p>1 whether -- as issues were alerted or 2 raised to the management, 3 management -- and I think I named 4 Jim Sherl specifically for some 5 portion. 6 I didn't match these dates up, 7 but Jim Greer. Those were the 8 associates. I believe Jeff Abernathy 9 had testified to the fact that he 10 followed up on orders that were raised 11 that were -- that the associates had 12 questions on. 13 Q. (BY MR. BOWER) Let me just ask 14 a couple follow-up questions on that, then. 15 So the first question is, when 16 flags were alerted, did the folks who 17 received those alerts keep files on all of 18 those orders that were flagged during this 19 time period? 20 MS. TABACCHI: Object to the 21 form. 22 THE WITNESS: No. There was 23 not a process to keep track of all of 24 the flags.</p>
<p style="text-align: right;">Page 195</p> <p>1 and reviewing these per the policies 2 and practices that we had in place. 3 Q. (BY MR. BOWER) Let me ask 4 perhaps a question in a little bit better way 5 because that was maybe a bad question. 6 In connection with Walmart's 7 suspicious order monitoring at DC 6045, who 8 was -- would have been responsible for 9 reviewing orders from Store 3326? 10 MS. TABACCHI: Object to the 11 form. 12 THE WITNESS: So the 13 responsibility for all stores was 14 within the policies and practices of 15 the distribution center. 16 Q. (BY MR. BOWER) And I 17 understand that, but I'm asking, what were 18 those policies and practices? Who had that 19 responsibility? 20 MS. TABACCHI: Object to the 21 form. 22 THE WITNESS: The DC associates 23 were reviewing orders as they were 24 processing. As flags were alerted,</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. (BY MR. BOWER) And then my 2 second question on that is, during this time 3 period when an order was flagged, would 4 Walmart hold that order prior to the review 5 by the -- Mike Mullins and Jimmie Sherl? 6 MS. TABACCHI: Object to the 7 form. 8 THE WITNESS: They would follow 9 up on that order before they would 10 be -- before they would proceed 11 through the picking process. 12 Q. (BY MR. BOWER) Let me just 13 make sure I understand your question [sic]. 14 Let me ask it a different way. 15 During this time period -- and 16 this is September 2007; correct? 17 MS. TABACCHI: Object to the 18 form. 19 THE WITNESS: I'm sorry. 20 Q. (BY MR. BOWER) Let's just use 21 a time period. Okay? Let's use the date of 22 this document which is September 2007. Okay? 23 During that time period, if an order is 24 flagged by an associate at DC 6045, does</p>

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1 Walmart hold that order prior to shipping it?
2 A. They would hold that order,
3 conduct outreach to understand the nature of
4 the order, and then at the -- at the point at
5 which they were able to clear that order,
6 they -- that's the point at which it would be
7 shipped.
8 Q. And how -- how would Walmart go
9 about holding the order?
10 A. It was a -- it was a procedure
11 within the -- within the distribution center
12 itself. As -- as the orders were worked,
13 there was constant communication between the
14 associates and management. And so they had
15 to pick up the phone and call the -- call a
16 store or market director at that moment.
17 That's the process that they went through.
18 Q. Okay. So let's just walk
19 through that process. Okay?
20 We're in September 2007 in
21 DC 6045; okay? An order comes in from Ohio
22 for ten bottles of Oxy 5s.
23 Okay?
24 100 dosages per bottle. Okay?

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1 What happens to that order?
2 MS. TABACCHI: Object to the
3 form. Beyond the scope.
4 THE WITNESS: The associates
5 would work through the process of
6 filling that order. If a flag was
7 raised in the process of filling that
8 order, they would pass it to the
9 management that was on duty at that
10 time, and they would follow up to
11 determine -- to gather more
12 information about that order, the need
13 for that order. And once they had
14 satisfied that, they would continue
15 the processing of that order.
16 Q. (BY MR. BOWER) And how -- let's
17 break that down a little bit more.
18 How would they pass that order
19 to management?
20 A. Again, this was a very small
21 facility. And there was just constant
22 communication, constant dynamic communication
23 throughout the order-filling process,
24 tracking of orders.

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1 Q. But let me just -- I mean, that
2 doesn't answer my question. The question is
3 how would the associate pass that order to
4 management?
5 A. They would communicate it to
6 them directly.
7 Q. And how would they do so?
8 A. Verbally.
9 Q. Would they ever communicate it
10 in writing?
11 MS. TABACCHI: Object to the
12 form.
13 THE WITNESS: I don't believe
14 that that was the practice at the
15 time. My understanding was that there
16 was communication directly between an
17 associate that flagged an item and a
18 manager.
19 Q. (BY MR. BOWER) And what
20 information specifically would they
21 communicate?
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: That they thought

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1 that there was something about this
2 order that needed to be reviewed.
3 Q. (BY MR. BOWER) Would they
4 communicate the store number?
5 A. That would be -- that would be
6 tied to the order itself.
7 Q. Would they communicate the item
8 number?
9 MS. TABACCHI: Object to the
10 form.
11 THE WITNESS: That would be
12 part of the order that they were
13 reviewing.
14 Q. (BY MR. BOWER) Would they
15 communicate the amount ordered?
16 A. Yes.
17 Q. Would they communicate the
18 reason that they had escalated the order?
19 A. I believe that's inherent in
20 the conversation of why I'm raising my hand
21 about this order.
22 Q. And then the managers of the DC
23 would memorize all of that information? Is
24 that your testimony?

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1 MS. TABACCHI: Object to the
2 form.
3 THE WITNESS: No. I -- that's
4 not my testimony. I -- from a moving
5 forward to communicating with the
6 store, I don't know if they jotted a
7 note. I -- I don't know that.
8 Q. (BY MR. BOWER) Have you ever
9 received any note regarding an order that was
10 reviewed in 2007 at DC 6045?
11 MS. TABACCHI: Object to the
12 form. Beyond the scope. Are you
13 asking the witness herself?
14 MR. BOWER: Yes.
15 MS. TABACCHI: In her --
16 MR. BOWER: She just said they
17 may have jotted a note. I'm asking
18 her if she's ever seen one.
19 MS. TABACCHI: You're asking
20 her if she, Susanne Hiland, ever
21 received a note from 2007.
22 MR. BOWER: No, I'm asking if
23 she's ever seen one. Not received,
24 seen a note.

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1 THE WITNESS: I said it may
2 have happened. I'm -- I'm testifying
3 that the communication was largely
4 verbal.
5 Is it possible that there was a
6 note?
7 Q. (BY MR. BOWER) Well, look.
8 We've got thousands of orders coming in every
9 day for DC 6045; right? And you're telling
10 me that these hourly associates are verbally
11 communicating orders that they flagged to the
12 managers so that they can go then review
13 them?
14 MS. TABACCHI: Object to the
15 form. Misstates testimony.
16 THE WITNESS: I think that
17 assumes that there were orders of --
18 outlier orders in huge numbers. This
19 was a -- this was a closed system
20 where we had policies and procedures
21 in place. That doesn't speak to the
22 number of orders that were raising
23 flags to the associates.
24 Q. (BY MR. BOWER) My question

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1 is --
2 MR. BOWER: That wasn't my
3 question, so I move to strike.
4 Q. (BY MR. BOWER) My question is,
5 would you agree that there were thousands of
6 orders per item coming into DC 6045 in 2007?
7 MS. TABACCHI: Object to the
8 form. Beyond the scope.
9 THE WITNESS: For what time --
10 for the entire 2007?
11 Q. (BY MR. BOWER) 2007.
12 MS. TABACCHI: Object to the
13 form.
14 Q. (BY MR. BOWER) Average day,
15 2007, what does it look like at 6045? How
16 many orders for specific items are coming in
17 for controlled substances?
18 MS. TABACCHI: Object to the
19 form. Beyond the scope.
20 Q. (BY MR. BOWER) Let me break it
21 down a bit more, then, since we're getting
22 objections.
23 You said once a week. How many
24 actual days a week did DC 6045 fill orders?

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1 It was four days a week; right?
2 A. It was four days a week.
3 Q. So now we're averaging 1,000 --
4 if a -- let's assume all pharmacies' orders
5 are averaging 1,000 orders a day. Right?
6 4,000 pharmacies, four days a week. Okay?
7 MS. TABACCHI: Object to the
8 form. Beyond the scope.
9 MR. BOWER: Approximately;
10 right?
11 THE WITNESS: Approximately.
12 Again, not every pharmacy ordered
13 every week.
14 Q. (BY MR. BOWER) Let's say half
15 of those pharmacies order. Right? Or 2,000
16 pharmacies. 500 orders per day. Right?
17 MS. TABACCHI: Object to the
18 form.
19 THE WITNESS: That would be
20 approximately that number.
21 Q. (BY MR. BOWER) And those
22 pharmacies are ordering multiple products;
23 correct?
24 MS. TABACCHI: Same objections.

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1 THE WITNESS: They could order
2 multiple products.
3 Q. (BY MR. BOWER) They could
4 order more than ten products; correct?
5 MS. TABACCHI: Same objections.
6 THE WITNESS: They could order
7 more than ten.
8 Q. (BY MR. BOWER) So DC 6045
9 could have been getting more than 5,000 item
10 orders every day during this time period;
11 correct?
12 MS. TABACCHI: Object to the
13 form. Beyond the scope.
14 THE WITNESS: It's possible
15 that they got multiple orders in the
16 thousands. It's possible.
17 Q. (BY MR. BOWER) And Walmart's
18 policy was that its hourly associates would
19 review those orders to determine whether they
20 were potentially suspicious; is that correct?
21 MS. TABACCHI: Object to the
22 form.
23 THE WITNESS: Our policy and
24 practices were specific to the

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1 processing of orders and the knowledge
2 that these associates had, combined
3 with other interaction and ongoing
4 process with management. We did not
5 rely on our hourly associates as the
6 only source of monitoring our controls
7 for opioids in this time period.
8 That's not true.
9 Q. (BY MR. BOWER) In 2007, who was
10 responsible for flagging a suspicious order
11 at DC 6045 for controlled substances?
12 MS. TABACCHI: Object to the
13 form.
14 THE WITNESS: Any associate
15 that had a concern and raised a
16 concern related to the orders that
17 they were filling.
18 Q. (BY MR. BOWER) Other than the
19 associates that we've discussed, is there
20 anyone else at DC 6045 who is responsible for
21 identifying suspicious orders?
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: It -- there

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1 may -- other than the ones that I
2 specifically named, or ...
3 Q. (BY MR. BOWER) Other than the
4 associates who were reviewing the orders as
5 they came in, is there anyone else who was
6 responsible for reviewing those orders to
7 determine whether they were potentially
8 suspicious?
9 MS. TABACCHI: Object to the
10 form.
11 THE WITNESS: So I think the
12 use of the word "responsible" is --
13 there -- they -- the entire team was
14 working on orders with products that
15 they knew were highly controlled. The
16 entire distribution team was able and
17 engaged. They knew their products.
18 They knew the process. They were --
19 everyone in that building was engaged
20 in the controls that were in place
21 related to the distribution.
22 Q. (BY MR. BOWER) Okay. Let me
23 see if I can get at it maybe a different way.
24 And I appreciate your explanation. Let me

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1 ask you this.
2 If an associate who was
3 reviewing the orders as they came in did not
4 escalate or flag the order, would that order
5 be filled without further review?
6 MS. TABACCHI: Object to the
7 form.
8 THE WITNESS: That's a
9 hypothetical. There were multiple
10 people touching orders.
11 Q. (BY MR. BOWER) Okay. So -- so
12 let --
13 A. It wasn't -- it wasn't just one
14 person deciding this passes through. There
15 were multiple people in the building working
16 with those and -- that saw different pieces
17 of the process and had the ability to -- and
18 knowledge to raise their hand.
19 Q. And what do you mean by
20 "knowledge"?
21 A. Their experience. They'd been
22 working with these products every single day.
23 They would see what was happening in that
24 day. They would know from their experience

<p style="text-align: right;">Page 210</p> <p>1 how those products flowed through the 2 distribution center. And they were all 3 committed to making sure that they were 4 following policies, procedures, and they 5 understood the products that they were 6 dispensing, and how -- how controlled they 7 were.</p> <p>8 Q. And what's the basis for your 9 statement that they were all committed to 10 making sure that they were following policies 11 and procedures?</p> <p>12 A. I spoke to Scott Culver and to 13 Mike Mullins about -- about the associates. 14 I was interested in tenure of the associates, 15 how we selected them, their training. I 16 would -- I asked them about the atmosphere 17 within the building, and how those -- how 18 they interacted together with the management 19 team to understand how these types of 20 processes worked at that time.</p> <p>21 Q. Okay. And what did they tell 22 you with respect to how they selected the 23 associates?</p> <p>24 A. They were highly tenured</p>	<p style="text-align: right;">Page 212</p> <p>1 MS. TABACCHI: Object to the 2 form.</p> <p>3 THE WITNESS: It would be an 4 individual -- it would be an 5 individual tenured situation.</p> <p>6 Some of them would -- would 7 have started with the building opening 8 in 2002. But they would be long-term 9 logistics associates.</p> <p>10 Q. (BY MR. BOWER) Would you agree 11 that in order for an associate to review an 12 order for substances, they would have to have 13 some experience with controlled substances 14 and filling orders in order to know whether 15 an order was unusual?</p> <p>16 MS. TABACCHI: Object to the 17 form. Beyond the scope.</p> <p>18 THE WITNESS: I think they 19 could be trained to understand what 20 the policies and procedures were.</p> <p>21 Q. (BY MR. BOWER) And did Walmart 22 provide training to its associates at -- 23 during the 2007 time period?</p> <p>24 MS. FUMERTON: Object to the</p>
<p style="text-align: right;">Page 211</p> <p>1 associates within the distribution system.</p> <p>2 In fact, Mike specifically 3 commented -- and I believe I asked Jeff 4 Abernathy as well -- the average tenure of 5 the associates in that building was somewhere 6 between 17 and 18 years. And so if you look 7 back at our distribution history, these were 8 people that had been working in this 9 building, with these products, for more than 10 a decade.</p> <p>11 Q. And is it your -- so it's your 12 testimony that these people who were 13 reviewing the orders have been working at 14 DC 6045 reviewing orders for controlled 15 substances for more than a decade?</p> <p>16 MS. TABACCHI: Object to the 17 form. Misstates testimony.</p> <p>18 THE WITNESS: No. I believe I 19 said they were tenured within the 20 logistics.</p> <p>21 Q. (BY MR. BOWER) Okay. How long 22 had the folks who were reviewing orders in 23 2007 been reviewing orders for controlled 24 substances?</p>	<p style="text-align: right;">Page 213</p> <p>1 form.</p> <p>2 THE WITNESS: Yes.</p> <p>3 Q. (BY MR. BOWER) And what 4 specific training did it provide regarding 5 flagging orders for unusual size?</p> <p>6 MS. TABACCHI: Object to the 7 form.</p> <p>8 THE WITNESS: Again, it was an 9 understanding of the products that 10 they were using, and raising any 11 concerns that they had to management.</p> <p>12 Q. (BY MR. BOWER) And what did 13 Walmart train the associates with respect to 14 the understanding of the products they were 15 using?</p> <p>16 MS. TABACCHI: Object to the 17 form. Beyond the scope.</p> <p>18 THE WITNESS: So again, because 19 of the high security that was in the 20 building, they were aware of the 21 restrictions of those products.</p> <p>22 Q. (BY MR. BOWER) I've been 23 asking about the specific training, okay? 24 Did Walmart provide its associates who were</p>

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1 reviewing orders for controlled substances
2 any specific training with respect to those
3 substances?
4 MS. TABACCHI: Object to the
5 form. Beyond the scope.
6 THE WITNESS: There was
7 training as -- as the associates came
8 in around what their duties and
9 responsibilities were.
10 Q. (BY MR. BOWER) And what
11 specific training was provided in connection
12 with monitoring for orders of controlled
13 substances?
14 MS. TABACCHI: Same objections.
15 THE WITNESS: I don't have
16 specific to that -- to that topic.
17 What they understood was their
18 responsibilities, how to perform their
19 duties in their area of
20 responsibility, and the nature of the
21 items that they were --
22 Q. (BY MR. BOWER) Well, how do
23 you --
24 A. -- handling.

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1 MS. TABACCHI: If you would
2 allow her to complete her answer.
3 MR. BOWER: Sorry, go ahead.
4 THE WITNESS: I'm done.
5 Q. (BY MR. BOWER) Well, your
6 testimony is that they understood what their
7 responsibilities were and how to perform
8 their duties in the area. So my question is,
9 how did they understand what their
10 responsibilities were?
11 A. I gained that knowledge from
12 speaking to the manager of the distribution
13 centers, Scott, who had responsibility.
14 Q. And what did Scott tell you
15 with respect to how associates who were
16 reviewing orders of controlled substances --
17 strike that.
18 What did Scott tell you with
19 respect to the training for associates who
20 were reviewing orders of substances in 2007?
21 A. What he told --
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: What he told me

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1 was that there were long-tenured
2 logistics associates that had -- many
3 of them had been in that building
4 since the day that it opened. They
5 understood their -- they understood
6 the products that they were
7 distributing. They understood their
8 role. And they were all engaged in
9 executing the policies and practices
10 at DC '45.
11 Q. (BY MR. BOWER) So is it a fair
12 statement that it was more their experience
13 and specific training that he had relied on
14 in reviewing orders for controlled
15 substances?
16 MS. TABACCHI: Object to the
17 form.
18 THE WITNESS: Their -- learning
19 how to do their job would be part of
20 their training. And Walmart has other
21 training plans. So to -- but specific
22 to order monitoring, it was part of
23 the job that they were trained to do.
24 Q. (BY MR. BOWER) But I just --

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1 look. The records would have been unclear,
2 so I want to make sure it's clear.
3 Did these associates who were
4 reviewing orders for controlled substances
5 receive any specific training with respect to
6 how to conduct those reviews?
7 MS. TABACCHI: Object to the
8 form.
9 THE WITNESS: What -- what they
10 understood about their responsibility
11 was that they had a role in raising
12 issues to their management, when those
13 issues were identified.
14 Q. (BY MR. BOWER) Okay. And I
15 understand that your answer is that's what
16 they understood. But my question is a little
17 bit different. I'm just trying to understand
18 whether these associates who were responsible
19 for reviewing orders of controlled substances
20 at DC 6045 in 2007 received any specific
21 training in connection with those
22 responsibilities, specific to controlled
23 substances.
24 MS. TABACCHI: Object to the

<p style="text-align: right;">Page 218</p> <p>1 form.</p> <p>2 THE WITNESS: They were</p> <p>3 dispensing controlled substances, so</p> <p>4 everything about their training for</p> <p>5 their job was related to their</p> <p>6 responsibilities within the building.</p> <p>7 Q. (BY MR. BOWER) What do you</p> <p>8 mean by "they were dispensing controlled</p> <p>9 substances"?</p> <p>10 A. I misstated. They were order</p> <p>11 filling for controlled substances.</p> <p>12 Q. I think we can all recognize</p> <p>13 they were order filling controlled</p> <p>14 substances, but my question is different.</p> <p>15 Okay?</p> <p>16 There's an associate -- there's</p> <p>17 associates in DC 6045 in 2007 that are</p> <p>18 responsible for order monitoring for</p> <p>19 controlled substances; correct?</p> <p>20 A. They're involved in order</p> <p>21 monitoring within their job.</p> <p>22 Q. And indeed one of their</p> <p>23 responsibilities is to monitor orders to</p> <p>24 determine whether those orders might be</p>	<p style="text-align: right;">Page 220</p> <p>1 that the associates had, and the</p> <p>2 familiarity that they had in their</p> <p>3 jobs with their responsibilities, and</p> <p>4 that there was constant communication</p> <p>5 on a daily basis between all of the</p> <p>6 associates, including managers, with</p> <p>7 the policies and practices within that</p> <p>8 building.</p> <p>9 Q. (BY MR. BOWER) Okay. Let's go</p> <p>10 back to this controlled drug stock exception</p> <p>11 report for a moment. Were these reports used</p> <p>12 to monitor orders for controlled substances?</p> <p>13 MS. TABACCHI: Are you looking</p> <p>14 at Exhibit 7, tab A?</p> <p>15 MR. BOWER: Yes.</p> <p>16 THE WITNESS: These were not</p> <p>17 suspicious order reports.</p> <p>18 Q. (BY MR. BOWER) I just want</p> <p>19 to -- I'm not sure if I understand your</p> <p>20 answer. What do you mean "These were not</p> <p>21 suspicious order reports"?</p> <p>22 A. I believe that you asked me</p> <p>23 whether these were used to monitor for</p> <p>24 suspicious orders. These were not reports of</p>
<p style="text-align: right;">Page 219</p> <p>1 unusual size; correct?</p> <p>2 MS. TABACCHI: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: Their</p> <p>5 responsibility was to raise any</p> <p>6 concerns about outliers that they</p> <p>7 identified within their area of</p> <p>8 responsibility or through their daily</p> <p>9 work.</p> <p>10 Q. (BY MR. BOWER) And in</p> <p>11 connection with those responsibilities to</p> <p>12 identify outliers, did Walmart provide them</p> <p>13 any specific training as to how they were to</p> <p>14 go about identifying outliers?</p> <p>15 MS. TABACCHI: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: There's --</p> <p>18 there's not a specific training manual</p> <p>19 that I can hand to you that details</p> <p>20 the training that the associates were</p> <p>21 given.</p> <p>22 Through my conversations with</p> <p>23 the -- with Scott Culver, he talked</p> <p>24 about the awareness, the knowledge</p>	<p style="text-align: right;">Page 221</p> <p>1 suspicious orders.</p> <p>2 Q. And I understand that they may</p> <p>3 not be reports of suspicious orders, but did</p> <p>4 Walmart use this information to monitor for</p> <p>5 orders that were suspicious?</p> <p>6 A. We used these as a way to</p> <p>7 communicate patterns to our partners in</p> <p>8 operations, as well as to provide information</p> <p>9 that was directly requested from</p> <p>10 Carolyn Adams at the DEA.</p> <p>11 Q. But -- and I -- I understand</p> <p>12 that's what they were used for. I'm just</p> <p>13 trying to confirm that these reports were not</p> <p>14 used at the DC 6045 to orders -- to review</p> <p>15 orders for controlled substances as they came</p> <p>16 in.</p> <p>17 MS. TABACCHI: Object to the</p> <p>18 form.</p> <p>19 MR. BOWER: And I'll strike</p> <p>20 that. I'll ask a better question.</p> <p>21 Q. (BY MR. BOWER) Were these</p> <p>22 controlled drug stock exception reports used</p> <p>23 by the associates at DC 6045 to monitor</p> <p>24 orders for controlled substances as they</p>

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1 were -- came into the DC?
2 MS. TABACCHI: Object to the
3 form.
4 THE WITNESS: No. These were
5 monthly reports.
6 MR. BOWER: Thank you.
7 Q. (BY MR. BOWER) If we can turn
8 to bullet point -- going back to a few pages
9 in Exhibit 1. Walmart's bullet points there.
10 For its additional policies.
11 Sorry, tab 1 of Exhibit 7.
12 My -- thank you.
13 Are you there, the first bullet
14 point there?
15 A. Yes.
16 Q. So when orders were followed up
17 by speaking with pharmacists, were those
18 orders that had been previously flagged as
19 suspicious?
20 MS. TABACCHI: Object to the
21 form. I'm sorry, Zach.
22 MR. BOWER: Sorry.
23 MS. TABACCHI: Where are you?
24 MR. BOWER: Bullet point 1

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1 where you said -- where we were
2 looking at, "Followed up on orders by
3 speaking with pharmacists."
4 Do you see that?
5 End of the second line.
6 "As early as 1994 until 2010,
7 employees in Walmart's pharmacy
8 distribution centers reviewed
9 controlled drug stock exception
10 reports, followed up on orders by
11 speaking with pharmacists."
12 Do you see that?
13 A. Yes.
14 Q. What orders does that refer to?
15 A. Those are the orders that would
16 have been alerted, raised up to management.
17 Q. Okay. So these are the orders
18 that have already been flagged as being
19 unusual for some reason; is that correct?
20 MS. TABACCHI: Object to the
21 form.
22 THE WITNESS: Those are the
23 orders that we've been talking about
24 that the associates would have said --

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1 would have raised a -- noticed that
2 there was something out of the
3 ordinary and raised up to management
4 with -- in the process of completing
5 those orders.
6 Q. (BY MR. BOWER) Okay. These
7 orders are out of the ordinary. Can we agree
8 on that?
9 MS. TABACCHI: Object to the
10 form.
11 THE WITNESS: Those are --
12 those are the -- the follow-up that
13 was -- yes.
14 Q. (BY MR. BOWER) And did Walmart
15 have a policy or procedure with respect to
16 documenting the conversation with pharmacists
17 during this time period? During 2007 time
18 period?
19 MS. TABACCHI: Object to the
20 form.
21 THE WITNESS: During 2007?
22 MR. BOWER: Yes.
23 THE WITNESS: Specifically, no.
24 Q. (BY MR. BOWER) In the next,

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1 after that comment it says "and escalated
2 issues to market and/or region leadership."
3 Do you see that?
4 A. Yes.
5 Q. When would those escalations
6 occur?
7 A. Those would -- if -- if an
8 order was flagged, and they were -- follow-up
9 was being conducted, and they spoke to the
10 pharmacist at the store and didn't get a
11 clear answer or had additional questions,
12 whatever it might be, that's when they would
13 escalate it to the market. Or region.
14 Generally the market director would be the
15 one.
16 Q. Okay. And was there a specific
17 market director at Walmart in 2007 that was
18 responsible for reviewing these escalated
19 issues?
20 MS. TABACCHI: Object to the
21 form.
22 MR. BOWER: Or if you could
23 point to a title or something?
24 THE WITNESS: It would be -- in

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1 2007, they actually would have been
2 called -- I think market manager
3 was -- there was district manager.
4 There was market manager, and now
5 they're called something else.
6 Q. (BY MR. BOWER) Okay. But in
7 2007, it would have been --
8 A. I think market manager was
9 correct in 2007.
10 MR. BOWER: And I assume if
11 it's not correct, we can get
12 clarification on that at some point.
13 Right?
14 MS. TABACCHI: Yes.
15 Q. (BY MR. BOWER) Okay. And you
16 said you believe it was primarily the market
17 manager and not the region leadership? Is
18 that correct?
19 MS. TABACCHI: Object to the
20 form.
21 Q. (BY MR. BOWER) Well, you --
22 explain what you mean -- or let me ask it
23 again, then.
24 And after we talked about

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1 pharmacists it says "and escalated issues to
2 market and/or region leadership."
3 Do you see that?
4 A. Yes.
5 Q. Does that accurately reflect
6 the policy and procedure in place in 2007?
7 A. Yes.
8 Q. Okay. Under what circumstances
9 would region leadership become involved?
10 A. Normally it would be if -- you
11 know, if the market manager couldn't be
12 reached -- because this was, again, a dynamic
13 production, and so these issues were working
14 to be resolved same day. And so if the
15 market manager wasn't available for some
16 reason, the regional could be engaged.
17 Q. And was the goal during the
18 2007 time period to resolve these issues the
19 same day?
20 MS. TABACCHI: Object to the
21 form.
22 THE WITNESS: The goal was to
23 provide answers to those orders so
24 that they could be resolved, yes.

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1 Q. (BY MR. BOWER) And if the --
2 well, strike that.
3 And then what would either the
4 market and/or region leadership do when they
5 received an order that needed investigation?
6 MS. TABACCHI: Object to the
7 form.
8 Q. (BY MR. BOWER) Well, let me
9 just strike that, then.
10 We can read it; right? It says
11 "and escalated issues to market and/or region
12 leadership as needed to investigate orders
13 and/or resolve concerns." So what would the
14 market managers and/or region leadership do
15 to investigate orders during 2007 time
16 period?
17 MS. TABACCHI: Object to the
18 form.
19 I think you need to read the
20 whole thing.
21 Q. (BY MR. BOWER) Do you
22 understand my question?
23 A. So my experience, I was -- I
24 was a market -- I was a district manager in

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1 this broad time frame. And my experience
2 with what I would look at, if I was
3 contacted, if I had a question about the
4 order, I would either follow up with my
5 pharmacy manager -- it would depend on the
6 information that I was getting from the DC,
7 if they had already spoken to them.
8 If there was something specific
9 that needed me to go look at prescription
10 information, I had that access. I had a
11 limited number of pharmacies that I
12 supervised. So it would depend on the
13 scenario, the circumstance. But that's an
14 example of how I would go try to get
15 information to understand a specific order.
16 Q. (BY MR. BOWER) Well, you made
17 a good point, that you were in this role
18 during this time period. So just let me ask
19 you this.
20 Did you ever -- did this ever
21 occur, based on the best of your
22 recollection?
23 MS. TABACCHI: Object to the
24 form.

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1 THE WITNESS: I spoke to DC
2 associates -- I won't say on a regular
3 basis, but it wasn't completely
4 uncommon. Sometimes it could also be
5 if my pharmacy manager wasn't there
6 and the pharmacist that was in the
7 store didn't have the information that
8 they needed, they might call me.
9 And so it was -- it was not
10 frequent. It was -- but I did speak
11 to DC associates.
12 Q. (BY MR. BOWER) And just so I
13 get a general understanding, how many kind of
14 pharmacies were under your umbrella when you
15 had that role?
16 A. I had as many as 24. I had as
17 few as ten depending on the alignment.
18 MS. TABACCHI: Zach, our lunch
19 is here.
20 MR. BOWER: Let's go a few more
21 minutes. Get through at least this
22 bullet point and then we can take a
23 break.
24 MS. TABACCHI: Okay.

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1 Q. (BY MR. BOWER) So when folks
2 were contacted and issues were escalated, you
3 mentioned you would look at -- you said, "It
4 would depend on the information that I was
5 getting from the DC if I had already spoken
6 to them."
7 What does that mean?
8 A. So the --
9 MS. TABACCHI: Just beyond the
10 scope and notice in her personal
11 capacity. Go ahead.
12 MR. BOWER: Well, let me
13 rephrase, then.
14 Q. (BY MR. BOWER) During this
15 time period, were you carrying out Walmart's
16 policies and procedures for monitoring orders
17 of controlled substances?
18 MS. TABACCHI: Object to the
19 form.
20 THE WITNESS: I had
21 responsibilities that went into our
22 dispensing function related to --
23 ensuring that there was not diversion
24 occurring across my area of

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1 responsibility.
2 Q. (BY MR. BOWER) Okay. Well, now
3 I'm a bit confused because I thought you said
4 you had this role and you would have been one
5 of the folks where these issues were
6 escalated to. Is that not correct?
7 MS. TABACCHI: Object to the
8 form.
9 THE WITNESS: That is correct.
10 Q. (BY MR. BOWER) And these
11 issues that were escalated were in connection
12 with Walmart's suspicious order monitoring
13 program; is that not correct?
14 MS. TABACCHI: Object to the
15 form.
16 THE WITNESS: It was part of
17 the process that the distribution
18 centers conducted and part of the
19 information that they used in their
20 process was to reach out to operations
21 leadership. I was in an operations
22 leadership role at this time, so they
23 would reach out to me to gain more
24 information through their process.

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1 Q. (BY MR. BOWER) And what
2 information would they seek from folks like
3 you during the 2007 time period?
4 A. They would -- they would -- if
5 it was escalated to me, they would want to
6 know if I had information about a specific
7 order that they might be asking about.
8 Q. What type of information would
9 you have access to that they wouldn't during
10 this time period?
11 A. Well, I had supervision -- I
12 had responsibility for the pharmacies that
13 they were distributing to.
14 So could you -- I could go
15 physically stand in the pharmacy and
16 understand what the need for the order was
17 that was -- that they were questioning.
18 Q. Wait, your answer to my
19 previous question was, "If it was escalated
20 to me, they would want to know if I had
21 information about a specific order that they
22 might be asking about."
23 What specific information would
24 they be seeking from folks that were in your

Page 234

1 position?

2 MS. TABACCHI: Object to the

3 form.

4 THE WITNESS: The purpose of

5 the order from the pharmacy that I

6 supervised.

7 Q. (BY MR. BOWER) And how would

8 the folks in your position determine what the

9 purpose of that order was?

10 A. I would --

11 MS. TABACCHI: Object to the

12 form.

13 THE WITNESS: -- do one of

14 several things that might include

15 talking to a pharmacist, talking to a

16 pharmacy manager. I could go on-site.

17 I could look at their -- the specifics

18 around that drug.

19 There were -- there was a lot

20 of information that I had access to,

21 because I supervised those pharmacies.

22 Q. (BY MR. BOWER) Well, let's

23 break that down. You give us some things you

24 would do. Right? So what would you talk to

Page 235

1 a pharmacist about?

2 A. I would ask them why they

3 needed the order.

4 Q. And would you rely on what they

5 told you?

6 A. It would depend on the

7 circumstance --

8 Q. Okay.

9 A. -- of the response.

10 Q. Can you recall any specific

11 time where you asked a pharmacist a question

12 and you needed more follow-up?

13 MS. TABACCHI: Object to the

14 form. Beyond the scope.

15 THE WITNESS: I don't recall a

16 specific situation.

17 Q. (BY MR. BOWER) Not a single

18 time that you can recall specifically?

19 MS. TABACCHI: Same objections.

20 THE WITNESS: No, I --

21 Q. (BY MR. BOWER) Okay. And the

22 second thing you mentioned was you could go

23 onsite. What would you do when you went

24 onsite?

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1 MS. TABACCHI: Object to the

2 form. Beyond the scope.

3 THE WITNESS: If I needed to go

4 onsite, I could, again, speak to the

5 pharmacist. If I had questions about

6 the responses that they were giving

7 me, I could -- if there was a

8 prescription pending, I could look at

9 the prescription. There may have

10 been -- I supervised those

11 pharmacists. I supervised those

12 pharmacies, so I had pretty detailed

13 knowledge of the pharmacies that I was

14 responsible for.

15 Q. (BY MR. BOWER) And what kind

16 of knowledge are you referring to? Give us

17 some examples of detailed knowledge.

18 MS. TABACCHI: Object to the

19 form. Beyond the scope.

20 MR. BOWER: Well, let me strike

21 that.

22 Q. (BY MR. BOWER) Give us some

23 examples of detailed knowledge that would

24 have informed the folks who escalated these

Page 237

1 orders to you.

2 MS. TABACCHI: Object to the

3 form.

4 THE WITNESS: It would -- it

5 would be specific to the nature of the

6 order that was being placed.

7 I knew -- I knew my pharmacists

8 as part of Walmart's overall

9 organization. The connection that we

10 had between logistics was -- was -- I

11 knew the logistics people. They knew

12 who I was. They knew they could reach

13 out to me. George Chapman, in my

14 interview with him, recalled the same

15 thing in his time in role.

16 We -- the connection between

17 this distribution system was rather

18 seamless because logistics had the

19 ability to reach out to us, and --

20 throughout the entire distribution

21 channel, reach out and get any

22 information that they needed to

23 satisfy clearing that order.

24 Q. (BY MR. BOWER) Well, look.

<p style="text-align: right;">Page 238</p> <p>1 I'm trying to understand what the policy was 2 as reflected in Walmart's responses to 3 discovery. Okay? And I'm trying to 4 understand, looking at bullet point 1, what 5 actually happened. 6 A. Okay. 7 Q. Okay? Do you understand that? 8 And so I'm trying to 9 understand, when issue -- "escalated issues 10 to market and/or region leadership as needed 11 to investigate orders and resolve concerns," 12 that's in connection with Walmart's SOM 13 program; correct? 14 MS. TABACCHI: Object to the 15 form. Asked and answered. 16 THE WITNESS: It's a logistics 17 process that involved operations 18 leadership. 19 Q. (BY MR. BOWER) That's not my 20 question. My question is, was the escalation 21 of issues to market and/or region leadership 22 as needed to investigate orders and to 23 resolve concerns part of Walmart's suspicious 24 order monitoring program?</p>	<p style="text-align: right;">Page 240</p> <p>1 provide information about the pharmacy 2 that they knew, or they would go -- 3 again, depending on the nature of the 4 order, it would direct what 5 information they needed to look for. 6 Q. (BY MR. BOWER) Okay. In the 7 first part of your answer you said "They 8 would provide information about the pharmacy 9 they knew." What information would they 10 provide about the pharmacy? 11 MS. TABACCHI: Object to the 12 form. 13 THE WITNESS: One of the things 14 that they could provide is my pharmacy 15 manager has been on vacation for two 16 weeks, and they -- they came back from 17 vacation and so you should, you 18 know -- this is part of the gap in why 19 there's no information coming from the 20 pharmacy manager about the -- about 21 the order. 22 If you call the pharmacy 23 manager and say, you know, "Why is 24 this order being placed?" and the</p>
<p style="text-align: right;">Page 239</p> <p>1 MS. TABACCHI: Object to the 2 form. 3 THE WITNESS: It was a part of 4 the process and due diligence that our 5 logistics teams engaged in to 6 understand the orders that they had 7 raised concerns about. 8 Q. (BY MR. BOWER) And they 9 engaged in that process in order to review 10 orders that had been flagged as unusual; 11 correct? 12 MS. TABACCHI: Object to the 13 form. 14 THE WITNESS: To flag an order 15 for whatever reason it was being 16 flagged. 17 Q. (BY MR. BOWER) And I'm trying 18 to understand from Walmart what these folks 19 did to investigate orders. Okay? 20 What did they do to investigate 21 these orders that were escalated to them? 22 MS. TABACCHI: Object to the 23 form. Asked and answered. 24 THE WITNESS: They would</p>	<p style="text-align: right;">Page 241</p> <p>1 pharmacy manager says at that time, 2 "I'm not sure," or they're busy, that 3 could come across as something that 4 they wanted to escalate to the market 5 director to understand if there was 6 something related to that order that 7 needed to -- needed further 8 information. 9 I mean, it could be anything 10 from a personnel issue to -- it 11 could -- it could be a wide range of 12 things that the market director, 13 district manager knew about the store 14 that logistics had access to. 15 MS. TABACCHI: Zach, can we 16 take a break? 17 MR. BOWER: Well, I'm just 18 trying to get through this, because I 19 need an answer to this and I don't 20 think I've gotten one yet. 21 Q. (BY MR. BOWER) I need to 22 understand what was done -- Walmart has 23 specifically told us, right, that these folks 24 are needed to investigate orders.</p>

<p style="text-align: right;">Page 242</p> <p>1 Right? 2 Do you see that written there? 3 MS. TABACCHI: Object to the 4 form. 5 Q. (BY MR. BOWER) "Escalated 6 issues to market and/or region leadership as 7 needed to investigate orders." Right? 8 MS. TABACCHI: Zach, object to 9 the form. You need to read the entire 10 bullet and we've been on this bullet 11 for a long time. 12 MR. BOWER: We have, but we 13 haven't got much answer on it, have 14 we? 15 MS. TABACCHI: You're just not 16 satisfied with the answer you have. 17 MR. BOWER: No, I am satisfied. 18 I just don't think the witness 19 understands what I'm asking, and I'm 20 trying to ask it in a way that she 21 maybe understands. 22 Q. (BY MR. BOWER) So my question 23 is, when these orders are escalated to market 24 and/or region leadership as needed, what did</p>	<p style="text-align: right;">Page 244</p> <p>1 market leadership. The operations 2 leadership. 3 MR. BOWER: All right. We can 4 take a break. Do you want to take a 5 lunch break now? 6 MS. TABACCHI: Yes. 7 THE VIDEOGRAPHER: 12:15. We 8 are off the video record. 9 (Recess taken, 12:15 p.m. to 10 1:02 p.m.) 11 THE VIDEOGRAPHER: 1:02. We 12 are on the video record. 13 Q. (BY MR. BOWER) We're back from 14 lunch, Ms. Hiland. Do you understand you're 15 still under oath? 16 A. Yes. 17 Q. So we spent some time this 18 morning going through bullet point 1, and I 19 just have a couple broad follow-up questions 20 and we can move on. Okay? 21 A. Okay. 22 Q. The first thing I want to do is 23 I want to ask you whether the procedure we 24 discussed, whether that changed at any point</p>
<p style="text-align: right;">Page 243</p> <p>1 those folks do? I'm just trying -- what was 2 the policy as to what those folks were 3 supposed to do? 4 MS. TABACCHI: Asked and 5 answered. 6 THE WITNESS: They would have a 7 conversation with the logistics 8 associate that was reaching out to 9 them to understand what the question 10 was, and then they would go find 11 whatever information, validate what 12 they had already heard from the 13 pharmacist, or follow up specific to 14 whatever the point of escalation was. 15 It says "as needed." 16 Q. (BY MR. BOWER) And were there 17 any written policies and procedures that 18 guided what the market managers or region 19 leadership was to do? 20 MS. TABACCHI: Object to the 21 form. 22 THE WITNESS: No. This was a 23 practice of communication, and 24 exchange between logistics and the</p>	<p style="text-align: right;">Page 245</p> <p>1 between 2006 and 2010. 2 MS. TABACCHI: Object to the 3 form. 4 THE WITNESS: The procedure did 5 not change between that time period 6 2006 to 2010 for that specific 7 procedure. 8 Q. (BY MR. BOWER) And was that 9 procedure also in place for other 10 distribution centers? For example, the 11 centers that distributed hydrocodone? 12 MS. TABACCHI: Object to the 13 form. 14 THE WITNESS: Yes. They had 15 the 405 report. 16 Q. (BY MR. BOWER) Well, I'm 17 asking specifically about the review process 18 that was done by the associates for orders 19 that came in. Was that also done at your 20 distribution centers? 21 A. Yes. 22 Q. Okay. And what's your basis 23 for that statement? 24 A. That was from speaking with</p>

<p style="text-align: right;">Page 246</p> <p>1 Dena McClamroch, who was the DC manager for 2 our DC 6028 in Crawfordsville, Indiana. 3 Q. Did Walmart distribute 4 hydrocodone in other DCs other than DC 6028 5 during this time period? 6 MS. TABACCHI: Object to the 7 form. 8 THE WITNESS: Yes. We operated 9 other distribution centers, pharmacy 10 distribution centers, that distributed 11 hydrocodone. 12 Q. (BY MR. BOWER) Did those 13 distribution centers also employ the policy, 14 practice, or procedure referenced in bullet 15 point 1? 16 MS. TABACCHI: Object to the 17 form. Beyond the scope. 18 THE WITNESS: This was a 19 logistics procedure that applied to 20 all of those distribution centers. 21 Q. (BY MR. BOWER) And what's your 22 basis for that statement, that it applied in 23 DCs other than 6028 and 6045? 24 MS. TABACCHI: Same objections.</p>	<p style="text-align: right;">Page 248</p> <p>1 within the scope of the notice? 2 Q. (BY MR. BOWER) I'm asking 3 about the policies and procedures. 4 A. I'm sorry, can you restate the 5 question? 6 Q. Sure. When you spoke with 7 Dena, did she have personal knowledge that 8 this procedure that's reflected in bullet 9 point 1 was implemented at all of the DCs 10 that distributed hydrocodone? 11 MS. TABACCHI: Object to the 12 form. 13 THE WITNESS: I didn't ask her 14 that specific question, so I did not 15 get that response from her. 16 Q. (BY MR. BOWER) Moving on to 17 bullet point 3 for a moment. 18 Can you see that? The one that 19 starts "From approximately 2010"? 20 Do you see that one? 21 A. Yes. 22 Q. I just have a few questions on 23 this one. 24 Again, we see controlled drug</p>
<p style="text-align: right;">Page 247</p> <p>1 THE WITNESS: For the reason 2 that Dena spoke about it in her 3 building. And there was nothing 4 unique to Dena's building. And so 5 I -- in speaking with her, she 6 articulated that that was the process. 7 So it was a process that the logistics 8 team was using for their orders. 9 Q. (BY MR. BOWER) Would you agree 10 that there's no written policy or procedure 11 that would require the practice reflected in 12 bullet point 1 to apply to hydrocodone? 13 MS. TABACCHI: Object to the 14 form. 15 THE WITNESS: We don't reflect 16 a written procedure for this. 17 Q. (BY MR. BOWER) When you spoke 18 with Dena, did she have personal knowledge 19 that this procedure was implemented at the 20 DCs -- at all the DCs that distributed 21 hydrocodone? 22 MS. TABACCHI: Object to the 23 form. Can we focus on the geography 24 that's in this litigation, which is</p>	<p style="text-align: right;">Page 249</p> <p>1 stock exception reports; correct? 2 A. Yes. 3 Q. And we've already talked about 4 those reports; correct? 5 A. Yes. 6 Q. Okay. And then it goes on -- 7 after it references those reports and it says 8 "and internally circulated reports." 9 Do you see that? 10 A. Yes. 11 Q. Are those reports it's 12 referring to there that Walmart refers to, 13 are those reports controlled drug stock 14 exception reports or are those different 15 reports? 16 MS. TABACCHI: Object to the 17 form. 18 THE WITNESS: The 4 percent 19 report is a subset of information from 20 the controlled drug stock exception 21 report. 22 Q. (BY MR. BOWER) Okay. So from 23 2010 until 2015, the distribution centers 24 would create kind of subsets of the</p>

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1 controlled drug stock exception reports; is
2 that correct?
3 MS. TABACCHI: Object to the
4 form.
5 THE WITNESS: That is correct.
6 Q. (BY MR. BOWER) And those
7 reports would only include stores/items above
8 4 percent; is that correct?
9 A. The 4 percent report, yes,
10 that's what was reflected on that report.
11 Q. And then just a couple of
12 questions on that report. What does the
13 4 percent reflect?
14 A. That would be from the
15 exception report, the controlled drug stock
16 exception report. That would show -- so
17 there were two different 405 reports
18 synonymous with that exception report.
19 One showed by drug; one showed
20 by store. And so it would -- it would pull
21 together just those pharmacies that, for an
22 individual item, purchased more than
23 4 percent of an individual item for that time
24 period of the report.

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1 Q. Okay. That's helpful.
2 And then let me ask you this
3 question. If you go one page earlier in
4 Exhibit 7 to the kind of chart there with the
5 documents? The written documents and
6 policies? Do you see the bottom of that?
7 A. Yes.
8 Q. And then the first one is
9 document No. 11106. Right? Which is
10 actually tab 2 in this exhibit. Okay?
11 Tab 2. It's after the A, B, C,
12 D.
13 A. Oh. Thank you.
14 Q. Sorry about that.
15 So if you turn to tab 2, you'll
16 see there it's Document 11106.
17 Do you see that?
18 A. Yes.
19 Q. Okay. Now, this references the
20 4051s and 4052s; correct?
21 A. Yes.
22 Q. And so my -- I just have a few
23 questions on this, then. And one of those
24 questions is whether the procedure reflected

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1 in bullet point 3 is any different than this
2 written policy reflected on tab 2.
3 And I'll give you a second.
4 A. I'm changing the exhibit.
5 Q. Sure. We'll put it back.
6 A. So you're asking -- could you
7 ask your question again?
8 Q. Sure. So I'm just looking
9 at -- we're back to bullet point 3. Right?
10 Okay?
11 A. Correct.
12 Q. And I'm just trying to
13 understand whether that procedure described
14 in bullet point 3 differs than the procedure
15 that would be required by this document in
16 tab 2 ending in 11106.
17 A. So the bullet point includes
18 additional information and an additional
19 procedure above what's reflected in the
20 policy.
21 Q. Okay. So would it be a fair
22 statement that the policy reflected on tab 2
23 is a part of bullet point 3?
24 A. That -- that is correct.

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1 Q. Okay.
2 And so once we have -- let's go
3 back, then. We'll talk about bullet point 3,
4 because I think I understand what you're
5 saying.
6 Once we have those reports,
7 what is the policy with respect to what the
8 folks at Walmart are doing with that?
9 MS. TABACCHI: Object to the
10 form.
11 THE WITNESS: So based on the
12 policy, the report was reviewed by the
13 senior AP manager in logistics. And
14 that was forwarded over to the
15 diversion control coordinator for
16 review, per policy.
17 Q. (BY MR. BOWER) And these are
18 monthly reports; correct?
19 A. These are monthly reports.
20 Q. So during this time period,
21 from 2010 to 2015, was Walmart using these
22 monthly reports to monitor the daily orders
23 for controlled substances at 6045?
24 MS. TABACCHI: Object to the

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1 form.
 2 THE WITNESS: No, this was
 3 additional procedure that included
 4 other things that were occurring at
 5 the DC.
 6 Q. (BY MR. BOWER) Okay. And
 7 then, if you go back to -- you mentioned that
 8 bullet point 3 has some additional kind of
 9 procedures that aren't reflected in tab 2;
 10 correct?
 11 A. Correct.
 12 Q. And what did you mean by that?
 13 A. So in addition to the
 14 distribution from logistics to the diversion
 15 control coordinator, those 4 percent reports
 16 were sent to operations leadership.
 17 Q. And what -- for what reason
 18 were they sent to the operations leadership?
 19 A. It was information just to
 20 share from an overall -- it was a data point
 21 that we had so that they had more information
 22 about their stores.
 23 And if an order had never
 24 arisen to be -- to their attention, they just

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1 had view to their stores and their purchases
 2 if they appeared on that report.
 3 Q. Was that information used, for
 4 example, to look for diversions at the
 5 individual pharmacies?
 6 MS. TABACCHI: Object to the
 7 form.
 8 THE WITNESS: It was not used
 9 to look for a diversion. It was a
 10 data point if there was any
 11 operational issues that arose. And
 12 the point of the diversion control
 13 coordinator was to have a data point,
 14 again, for their -- the work that they
 15 are doing.
 16 Q. (BY MR. BOWER) So it wasn't --
 17 is it a -- strike that.
 18 These reports weren't
 19 necessarily used to look for diversion, but
 20 it was a data point that was considered in
 21 where to look for diversion at the individual
 22 pharmacies? Would that be accurate?
 23 MS. TABACCHI: Object to the
 24 form.

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1 THE WITNESS: The -- in trying
 2 to explain how we used them, because I
 3 saw these as well.
 4 The -- the way that these would
 5 be used is to look to see if
 6 pharmacies were appearing on the
 7 4 percent report.
 8 So as you were doing an
 9 operational review, it would be a data
 10 point to say, I've seen this, you
 11 know, let me check it out if there's
 12 anything there of concern. There may
 13 not have been. And not -- obviously
 14 not every store ever hit a 4 percent
 15 report. So it was just a data point
 16 for the market director to have more
 17 visibility into the operation of their
 18 pharmacy.
 19 Q. (BY MR. BOWER) Okay. Thank
 20 you for that.
 21 Now let's go to bullet point 4
 22 for a minute. Now we're in the time frame
 23 2011 to 2015; correct?
 24 A. Correct.

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1 Q. And this is when Walmart first
 2 implemented order alerts in Reddwerks;
 3 correct?
 4 A. Yes.
 5 Q. Do you know when in 2011
 6 Walmart first implemented order alerts in
 7 Reddwerks?
 8 A. I don't know the exact date.
 9 Q. Is that something you prepared
 10 to testify on today?
 11 MS. TABACCHI: Object to the
 12 form.
 13 THE WITNESS: I don't have an
 14 exact date.
 15 Q. (BY MR. BOWER) Do you know
 16 whether it was -- could it have been 2012?
 17 A. No. It was 2011.
 18 Q. And what makes you so certain
 19 it was 2011?
 20 A. Because of the documentation
 21 I've been given.
 22 Q. Can you refer to the specific
 23 document that you're thinking of?
 24 A. Yes.

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1 Q. Okay.
2 A. Sorry, this is what I was
3 afraid of.
4 Q. And just while you're looking
5 at it, I just want to confirm for the record
6 that you are looking in a binder you brought
7 with you today for a document that would
8 provide you a more precise date for when
9 Walmart first began implementing order alerts
10 in Reddwerks; is that correct?
11 A. That is correct. And I had it
12 tabbed and I took my tab off, so I apologize
13 for the delay.
14 I have an SOP document that
15 talks about it.
16 It was an exhibit that was used
17 for a prior deposition.
18 Q. Well, look. I don't think we
19 need to waste time on the record.
20 A. I'm sorry.
21 Q. I don't want to make this a
22 test for you either.
23 A. I have it. I just took the tab
24 off.

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1 Q. So maybe at a break or
2 something, I can look for it and you can
3 confirm that that's what you were looking
4 for.
5 So let's move on from that and
6 we'll come back to it later --
7 A. Okay.
8 Q. -- okay?
9 And at this point, when Walmart
10 first implemented order alerts in
11 Reddwerks --
12 A. If I may, I just found it.
13 Q. Oh, great. Okay.
14 So a document -- can you just
15 read the Bates number maybe into the record?
16 A. It is Bates No. 9226. It's
17 multiple -- I'm sorry, it was Exhibit 8 in
18 Sullins.
19 Q. Okay.
20 A. And it starts 9224. And the
21 information -- and that document starts with
22 a date of 9-30-2013, but the attachment is
23 dated 2011. And that's the attachment that I
24 was looking for.

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1 Q. And what -- what is the date on
2 the attachment specifically?
3 A. 12-20-2011.
4 Q. So sometime around the end of
5 2011. Agreed?
6 A. Yes. This is the SOP
7 enhancements.
8 Q. And on what basis is it your
9 testimony that this in fact went into place
10 at that date?
11 A. This is the document stating
12 the process that was in place.
13 Q. So let me just ask it
14 differently, then. Other than the document,
15 is there anything else that's informing your
16 testimony today with respect to when Walmart
17 first implemented order alerts in Reddwerks?
18 A. I spoke to Ramona Sullins about
19 the -- about the implementation of Reddwerks.
20 And there was no discrepancy in our
21 conversation about these documents and when
22 they were effective.
23 Q. So did Ms. Sullins confirm for
24 you that this policy in fact went into place

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1 on 12-20-2011?
2 A. We didn't talk about the exact
3 date. This is the order alert that's
4 reflected -- what we did talk about this is
5 this is the order alert and the documentation
6 that is reflected in the statement about the
7 Reddwerks alerting.
8 Q. So just so I'm clear as to this
9 date, other than the date reference on the
10 document itself, is there any other basis
11 that you're relying on for the initial
12 implementation of the alerts in Reddwerks?
13 MS. TABACCHI: Object to the
14 form.
15 THE WITNESS: The conversations
16 with Ramona Sullins.
17 Q. (BY MR. BOWER) And did
18 Ms. Sullins confirm to you that these
19 thresholds reflected in bullet point 4 in
20 fact began to be implemented on 12-20-2011?
21 A. I didn't ask her that specific
22 question. I was asking about time frame. It
23 says "approximately 2011." And so as we
24 talked about the process, my understanding

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1 was that is the correct time frame for these
2 alerts.
3 Q. And other than your
4 understanding and the document itself, is
5 there any other basis for that testimony?
6 MS. TABACCHI: Object to the
7 form. Asked and answered.
8 THE WITNESS: My interview and
9 the date on this document.
10 Q. (BY MR. BOWER) Did you, for
11 example, review any flagged orders during
12 this time period?
13 A. I did not.
14 Q. Okay. And I just want to ask a
15 little bit more. I understand -- strike
16 that.
17 Do you know whether during this
18 time period reflected in bullet point 4
19 there, whether Reddwerks was flagging orders
20 for non-controlleds of 50 bottles or more?
21 A. Yes.
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: The Reddwerks

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1 system did flag non-controlled items
2 as well.
3 Q. (BY MR. BOWER) In fact, during
4 this time period, Reddwerks was flagging any
5 order of greater than 50; isn't that correct?
6 MS. TABACCHI: Object to the
7 form. Beyond the scope.
8 THE WITNESS: That is part of
9 the SOP that was described in the
10 document.
11 Q. (BY MR. BOWER) And then, I
12 want to talk a little bit about this
13 30 percent. And still on bullet point 4.
14 A. Yes.
15 Q. You're there? Okay.
16 What does that 30 percent
17 reflect? It says "higher than a rolling
18 four-week average for that item."
19 What does that mean?
20 A. That means if the order
21 reflected higher than the average, that it
22 would flag.
23 Q. And would it flag -- strike
24 that.

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1 Would that order flag
2 regardless of the amount ordered?
3 MS. TABACCHI: Object to the
4 form.
5 THE WITNESS: There were some
6 limits that were put in place specific
7 to that four-week average, but it was
8 at a later period.
9 Q. (BY MR. BOWER) Okay. So
10 let's -- I'm -- and I think that's helpful.
11 I am a bit confused about those limits, so
12 I'd like to talk about those. Do you know
13 when those limits were first put in place?
14 A. The 2011 order limits?
15 Q. So bullet point 4 states
16 that -- I'm going to skip the first part, but
17 it states that "Orders for amounts 30 percent
18 higher than a rolling four-week average for
19 that item were flagged from 2011 to 2014."
20 Do you agree with that?
21 MS. TABACCHI: Object to the
22 form.
23 MR. BOWER: I'll strike it,
24 then.

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1 Q. (BY MR. BOWER) When was
2 Walmart flagging orders for amounts
3 30 percent higher than a rolling four-week
4 average?
5 A. That began in 2011.
6 Q. And that again -- that began on
7 or about 12-20-2011; is that correct?
8 A. That's correct.
9 Q. And how long did that process
10 continue without any order alerts in place?
11 MS. TABACCHI: Object to the
12 form.
13 THE WITNESS: So I think I'm
14 confused about any order limits.
15 Q. (BY MR. BOWER) Okay.
16 A. The alerts included order
17 limits.
18 Q. Did the alerts include order
19 limits from their initial implementation?
20 MS. TABACCHI: Object to the
21 form.
22 THE WITNESS: The 50-bottle
23 alert was part of the initial
24 implementation.

<p style="text-align: right;">Page 266</p> <p>1 Q. (BY MR. BOWER) But is it</p> <p>2 correct that bullet point 4 describes two</p> <p>3 different alerts? Would you agree with that?</p> <p>4 A. It includes two different</p> <p>5 calculations or two different numbers that</p> <p>6 could result in an alert.</p> <p>7 Q. So an order alerts if it's</p> <p>8 greater than 50 bottles for an individual</p> <p>9 item; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And that's per week; correct?</p> <p>12 A. Correct.</p> <p>13 Q. It's not reflected here, but</p> <p>14 it's your understanding that 50 bottles</p> <p>15 refers to per week; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And would you agree that this</p> <p>18 statement would be more accurate if it said</p> <p>19 50 bottles per week?</p> <p>20 MS. TABACCHI: Object to the</p> <p>21 form.</p> <p>22 Q. (BY MR. BOWER) Well, I think</p> <p>23 we're entitled to know what the policy was.</p> <p>24 And if the policy was 50 more bottles per</p>	<p style="text-align: right;">Page 268</p> <p>1 Q. (BY MR. BOWER) What if it was</p> <p>2 an order of 40 bottles one week and then an</p> <p>3 order of 20 bottles the following week?</p> <p>4 Would either of those orders be flagged under</p> <p>5 the 50-bottle threshold?</p> <p>6 MS. TABACCHI: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: In that scenario,</p> <p>9 that threshold would not apply.</p> <p>10 Q. (BY MR. BOWER) So is it your</p> <p>11 understanding that this 50 bottles or more</p> <p>12 referred to 50 bottles or more per week?</p> <p>13 MS. TABACCHI: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: Per -- based</p> <p>16 on -- based on your process, yes.</p> <p>17 Q. (BY MR. BOWER) And that's</p> <p>18 because the stores could only order</p> <p>19 controlled substances once a week; is that</p> <p>20 correct?</p> <p>21 A. That is correct.</p> <p>22 Q. And that was a threshold that</p> <p>23 was implemented based on the item number;</p> <p>24 correct?</p>
<p style="text-align: right;">Page 267</p> <p>1 week, then I think that's important</p> <p>2 information for us to know.</p> <p>3 So is it a true statement</p> <p>4 that --</p> <p>5 A. I think we've reflected what's</p> <p>6 in the SOP document which doesn't call out</p> <p>7 the time period.</p> <p>8 Q. Okay.</p> <p>9 A. Any order that's over 50 is</p> <p>10 flagged. And some of these orders -- or some</p> <p>11 of these flags could be one or the other</p> <p>12 prevailed, obviously.</p> <p>13 Q. So let's -- let me ask you</p> <p>14 this, then. From -- in 2012, if a store</p> <p>15 ordered 60 bottles in a month, would those</p> <p>16 orders be flagged?</p> <p>17 MS. TABACCHI: Object to the</p> <p>18 form.</p> <p>19 THE WITNESS: The order -- if</p> <p>20 it was at one time?</p> <p>21 MR. BOWER: Yes.</p> <p>22 THE WITNESS: It would flag.</p> <p>23 If it was at one time, it would flag</p> <p>24 on the 50.</p>	<p style="text-align: right;">Page 269</p> <p>1 A. In this order, it was item</p> <p>2 number SKU, NDC. That would be --</p> <p>3 Q. So that's one way an order</p> <p>4 would be flagged. Right? 50 bottles or more</p> <p>5 by item number; right? During this time</p> <p>6 period, from end of 2011 to 2015; right?</p> <p>7 A. Correct.</p> <p>8 Q. And then the other way an order</p> <p>9 is flagged is if it's 30 percent higher than</p> <p>10 a rolling four-week average for that item;</p> <p>11 correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Okay. For that second flag,</p> <p>14 with 30 percent higher than a rolling</p> <p>15 four-week average, were there any minimums</p> <p>16 that would be required to meet for an order</p> <p>17 to be flagged?</p> <p>18 A. Yes.</p> <p>19 Q. And what were those minimums?</p> <p>20 A. An order between 0 and 10 items</p> <p>21 did not flag.</p> <p>22 Q. And what's the basis for that</p> <p>23 statement?</p> <p>24 A. It's in the SOP of the document</p>

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1 that I read.
2 Q. And that document is not
3 referenced in this bullet point 4, is it?
4 A. It is -- in bullet point 4 --
5 Q. Yes.
6 A. -- it is not.
7 Q. Well, any order less than ten
8 items would not be flagged from 2011 to 2015;
9 is that correct?
10 MS. TABACCHI: Object to the
11 form.
12 THE WITNESS: That is correct.
13 Q. (BY MR. BOWER) And by -- when
14 you referred to "ten items," you meant --
15 what did you mean by "ten items"?
16 A. Ten -- ten units of a single
17 item NDC.
18 Q. And a single item could be a
19 bottle of 100 dosages; correct?
20 A. Correct.
21 Q. A single bottle could be a
22 bottle of 500 dosages; correct?
23 MS. TABACCHI: Object to the
24 form.

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1 THE WITNESS: In this setting,
2 correct.
3 Q. (BY MR. BOWER) So is it a true
4 statement that an order, for example, for
5 Oxy 5, that was nine bottles, or 900 dosages,
6 would never be flagged in 2011 to 2015?
7 MS. TABACCHI: Object to the
8 form. Misstates testimony.
9 THE WITNESS: So the flags
10 were -- one piece of the program that
11 was running, according to these flags
12 in the settings in Reddwerks,
13 Reddwerks might not have flagged that,
14 but that was one piece of the program
15 that we were running.
16 Q. (BY MR. BOWER) And what is the
17 other piece of the program you're referring
18 to?
19 A. Again, associates consistently
20 looking for any outliers that they had that
21 was in place throughout this time period.
22 Q. Are you referring now to the
23 last bullet point there?
24 A. Yes.

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1 Q. Anything else that you were
2 thinking about when you provided that answer?
3 A. We -- so you're in to -- in --
4 what time frame?
5 Q. 2012.
6 A. Starting in 2012, we did
7 implement some order limits associated with
8 20 bottles specific to oxycodone 30, and we
9 started to look at all orders over 20 that
10 were processed about mid-2012.
11 Q. But in my hypothetical, an
12 order of Oxy 5s, an order of nine bottles,
13 would never have been flagged pursuant to any
14 of these policies other than the last bullet
15 point; is that correct?
16 MS. TABACCHI: Object to the
17 form.
18 Q. (BY MR. BOWER) And by "any of
19 these policies," I mean up until 2015, at
20 least.
21 A. The flags would not have
22 alerted nine bottles.
23 Q. Walmart would have relied on
24 the associates in the DC to review those

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1 orders; correct?
2 MS. TABACCHI: Object to the
3 form.
4 THE WITNESS: That was the
5 other piece of our program that was in
6 place.
7 Q. (BY MR. BOWER) So now we're in
8 the next bullet point. 2000 -- from
9 approximately July 2012. Do you see that?
10 A. Yes.
11 Q. Okay. What does it mean by
12 "DC 6045 implemented a hard limit of
13 20 bottles"?
14 A. That means that they would --
15 they wouldn't ship anything more than
16 20 bottles of oxycodone 30.
17 Q. And at that point in time, what
18 would Walmart do -- what was the policy and
19 procedure regarding an order that was over
20 20 bottles?
21 A. They --
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: So --

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1 MR. BOWER: I'll strike that.
2 I would like a clear question, so I'll
3 rephrase.
4 Q. (BY MR. BOWER) From
5 approximately July 2012 until approximately
6 2015, what was the policy and procedure with
7 respect to orders of oxy 30 of over
8 20 bottles at DC 6045?
9 A. So the policy was that if an
10 order came in for more than 20, the DC would
11 not ship more than 20, and those orders were
12 escalated for review.
13 Q. During this time period, would
14 Walmart ever reduce the order to 20 and ship
15 the order without reviewing it?
16 MS. TABACCHI: Object to the
17 form.
18 THE WITNESS: We did reduce
19 those orders to 20 and ship.
20 Q. (BY MR. BOWER) Did Walmart
21 review those orders before shipping them?
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: We reviewed those

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1 orders, every one of them that came
2 in. But the policy was we wouldn't
3 ship any more than 20, and so they'd
4 pass through and were processed.
5 Q. (BY MR. BOWER) And then in
6 July of 2012, Walmart also starts beginning
7 to identify Schedule II substances -- strike
8 that.
9 In July 2012, Walmart also
10 begins to flag orders of more than 20 bottles
11 for Schedule II substances at DC 6045; is
12 that correct?
13 A. Yes.
14 MS. TABACCHI: Object to --
15 Go ahead.
16 Q. (BY MR. BOWER) And can you just
17 describe for us what that process was?
18 I know in here it says "for
19 further review and follow-up as needed."
20 Do you see that?
21 A. Yes.
22 Q. So let's say we're at the end
23 of 2012. An order for controlled substances
24 comes in for more than 20 bottles. What was

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1 the policy and procedure at Walmart DC 6045?
2 A. So the report would be
3 circulated for review. A report would be
4 created and then circulated for review by the
5 DC associates. And it was forwarded on to
6 our asset protection team as well, to -- to
7 just take a review of that location.
8 Q. And we've already seen
9 testimony by Mr. Abernathy on that procedure;
10 correct?
11 A. Correct.
12 Q. Okay. Is there anything about
13 the procedure described by Mr. Abernathy that
14 you would disagree with?
15 MS. TABACCHI: Object to the
16 form.
17 THE WITNESS: I'd have to
18 review. I did review his deposition,
19 but I don't review the exact
20 testimony, so I'd have to review it.
21 Q. (BY MR. BOWER) Was there
22 anything as you sit here today testifying on
23 behalf of Walmart that you believe
24 Mr. Abernathy was incorrect about regarding

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1 that procedure?
2 MS. TABACCHI: Object to the
3 form.
4 THE WITNESS: Again, as I
5 reviewed it, I would have to look at
6 it again for these specifics.
7 Q. (BY MR. BOWER) But nothing
8 that you're prepared to identify today; is
9 that correct?
10 MS. TABACCHI: Object to the
11 form.
12 THE WITNESS: I didn't -- I
13 didn't prepare to comment on his
14 testimony.
15 Q. (BY MR. BOWER) Okay. And you
16 agree here that Walmart is relying on his
17 testimony?
18 MS. TABACCHI: Object to the
19 form.
20 THE WITNESS: In terms of?
21 Q. (BY MR. BOWER) In terms of
22 support for this procedure.
23 A. Yes, he testified to the
24 procedure.

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1 Q. And during this time period
2 from approximately July 2012 until
3 approximately 2015, was Walmart holding and
4 not shipping an order of controlled -- of
5 Schedule II controlled substances until the
6 review was complete?

7 MS. TABACCHI: Object to the
8 form.

9 THE WITNESS: The orders were
10 reviewed. Every order was reviewed,
11 and those reviews were completed.

12 Q. (BY MR. BOWER) In other words,
13 under bullet -- this bullet point, right,
14 that we're talking about, from approximately
15 July 2012 to approximately 2015?

16 A. Yes.

17 Q. Is it your -- is it Walmart's
18 testimony that any order of controlled
19 substances of greater than 20 bottles was
20 held for review prior to being shipped?

21 MS. TABACCHI: Object to the
22 form.

23 THE WITNESS: No. At this time
24 they were not all held.

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1 Q. (BY MR. BOWER) Okay. And how
2 did Walmart determine whether to hold an
3 order prior to shipment during this time
4 period?

5 MS. TABACCHI: Object to the
6 form.

7 THE WITNESS: So our order
8 would be flagged. The associates
9 would review the orders and pass those
10 on to the asset protection team. And
11 they would be cleared for shipment
12 once that review was completed.

13 Q. (BY MR. BOWER) And so going
14 back to my original question, then, would
15 Walmart hold those orders until they were
16 cleared?

17 MS. TABACCHI: Object to the
18 form.

19 THE WITNESS: I've confused
20 myself, because I'm trying to follow
21 your --

22 Q. (BY MR. BOWER) Okay. So let
23 me take a step back and ask the question
24 again.

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1 A. Okay.

2 Q. From approximately July 2012
3 until approximately 2015, for orders for
4 Schedule II controlled substances of more
5 than 20 bottles, would Walmart hold those
6 orders for review prior to shipping those
7 orders?

8 MS. TABACCHI: Object to the
9 form.

10 THE WITNESS: Those orders were
11 held and reviewed.

12 Q. (BY MR. BOWER) And what was
13 the policy in place at the time with respect
14 to holding orders?

15 A. This was a procedure that we
16 put in place specific to the -- to the
17 20-limit report. We would hold orders until
18 they could be cleared as appropriate to ship.

19 Q. So during this time period, any
20 order -- and we're talking about weekly
21 orders; correct?

22 A. Yes.

23 Q. Okay. So any store that
24 ordered more than 20 bottles of a controlled

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1 substance during this time period, those
2 orders would be held prior to shipment; is
3 that correct?

4 MS. TABACCHI: Object to the
5 form.

6 THE WITNESS: Not all of those
7 orders were held.

8 Q. (BY MR. BOWER) And that's where
9 I thought we were. I'm just trying to circle
10 back.

11 So how did Walmart during this
12 time period determine whether to hold an
13 order prior to shipment or whether to ship
14 the order before the review was completed?

15 A. If they could not clear the
16 over 20 report, the information -- this was a
17 multi-stage process. The distribution center
18 associates were involved. If that could not
19 be cleared, the order -- the distribution
20 center associate could clear the order and
21 ship the order. If that could not be
22 cleared, information was then passed on to
23 our asset protection team.

24 There may have been some

<p style="text-align: right;">Page 282</p> <p>1 involvement as well with the practice 2 compliance team, and those orders weren't 3 shipped until there were -- there was a 4 clearing of those orders. 5 Q. (BY MR. BOWER) Are there any 6 written policies or procedures that you could 7 point to to -- that would reflect what you 8 just described? 9 A. Yes. There was an exhibit used 10 in Abernathy that talked -- that has a 11 flowchart that speaks to that process. 12 Q. So during this time period, is 13 it a true statement that the only order that 14 would be held would be an order that was 15 escalated by the DC? 16 MS. TABACCHI: Object to the 17 form. 18 THE WITNESS: If the DC could 19 clear it, they would ship it. 20 Q. (BY MR. BOWER) And what were 21 the policies and procedures regarding when 22 the DC could clear an order? 23 MS. TABACCHI: Object to the 24 form.</p>	<p style="text-align: right;">Page 284</p> <p>1 Okay? So let's say an order is flagged as 2 being over 20. Okay? 3 A. Okay. 4 Q. That order is reviewed; 5 correct? 6 A. Correct. 7 Q. Did Walmart keep a due 8 diligence file or any file in connection with 9 that review during this time period? 10 MS. TABACCHI: Object to the 11 form. 12 THE WITNESS: It would depend 13 on where the review was conducted. If 14 asset protection completed a review, 15 they would have review -- they would 16 have notes related to their review. 17 Q. (BY MR. BOWER) By "asset 18 protection," what do you mean? 19 Where physically are those 20 folks during this time period? 21 A. They would have been at the 22 corporate office. 23 Q. Okay. So during this time 24 period, there should be a file for any order</p>
<p style="text-align: right;">Page 283</p> <p>1 Q. (BY MR. BOWER) And now we're 2 still talking about the same time period. 3 A. Same time period. They would 4 have to be satisfied that their reason for 5 the order was -- that the explanation for it 6 made sense. 7 Q. And are there any written 8 policies and procedures defining or 9 describing how the DC would go about 10 determining whether they were satisfied? 11 A. There were no procedures, but 12 this was a similar process that they -- we 13 had had in place around alerts that were 14 raised to them. 15 Q. During this time period, for 16 those orders that were flagged as being over 17 20, did Walmart keep a due diligence file for 18 those orders? 19 A. We have some of those files. 20 The over-20 reports, I believe, have been 21 produced. 22 Q. And I'm not talking about the 23 over-20 reports. I'm talking about a 24 specific file related to a specific order.</p>	<p style="text-align: right;">Page 285</p> <p>1 that was escalated to the corporate office; 2 is that correct? 3 MS. TABACCHI: Object to the 4 form. 5 THE WITNESS: I don't know how 6 many there would be. I don't know 7 how -- the retention on those files, 8 but they did take notes on the files. 9 Q. (BY MR. BOWER) Did Walmart 10 have a policy and procedure in place that 11 required those files to be kept? 12 MS. TABACCHI: Object to the 13 form. 14 THE WITNESS: Not specific -- 15 not a specific retention policy to 16 those. 17 Q. (BY MR. BOWER) What about a 18 specific policy with respect to the creation 19 of the file? A written record that due 20 diligence was done? 21 A. In this time frame? 22 Q. Yes. We're talking 2012 to 23 2015. 24 A. There were policies put in</p>

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1 place around documentation toward the end of
2 that time period.
3 Q. And are you referring to a
4 specific policy or document that we could
5 read into the record?
6 A. Yes.
7 Q. Okay.
8 A. There --
9 Q. Go ahead. I don't know if
10 you're looking for it or if you have it.
11 A. There are documentation
12 requirements in the policy that is dated
13 August 2014, and the Bates number starts
14 8377.
15 Q. And can you just -- since I
16 don't have access to that document at the
17 moment. It's a document you brought with you
18 today; correct?
19 A. It's part of the -- it is part
20 of the exhibit -- one of the exhibits.
21 Q. Okay.
22 A. It actually might be in this
23 book. Oh, it is in this book.
24 It's behind tab 3.

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1 Q. Okay. So maybe this is a
2 different copy of the same policy? It's a
3 different Bates number. I just want to ...
4 Is that --
5 A. Oh. This was used in
6 Johnson 1. Sorry.
7 Q. Okay. It's fine. I just want
8 to make sure -- is it the same -- based on
9 what you're looking at, does it appear to be
10 the same policy?
11 A. I put them in chronological
12 order.
13 Q. Okay.
14 A. It is 83- -- it's behind
15 tab 11. Sorry.
16 Q. Thank you for that.
17 Okay. So the document we've
18 been talking about ending in 8377, this would
19 be the first time that Walmart had a written
20 policy that would require a written due
21 diligence file; is that correct?
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: This is the

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1 policy that reflected the
2 documentation of those files.
3 Q. (BY MR. BOWER) And according
4 to the responses here, this went into -- went
5 into practice in -- on or about August 2014;
6 is that correct?
7 MS. TABACCHI: Object to the
8 form.
9 THE WITNESS: Yes. That is
10 correct.
11 Q. (BY MR. BOWER) And I will have
12 some questions on these policies, not too
13 many, but maybe we'll go through them after
14 we finish -- we're almost through the bullet
15 point, so let's finish there and then we'll
16 go through the policies. Okay?
17 A. Okay.
18 Q. So I asked about due diligence
19 for the orders of over 20 for controlleds,
20 but I didn't ask about due diligence for
21 orders of oxy 30 over 20. So let me ask
22 about that.
23 During this period of July 2012
24 to 2015, did Walmart keep a due diligence

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1 file for orders of oxy 30 that were over
2 20 bottles per week?
3 A. There was a file kept of the
4 orders that were reviewed. There's not a
5 policy that talks about the retention of
6 additional files.
7 Q. I just want to clear up
8 something I don't think I asked, but I might
9 have. So I -- there may be an objection to
10 this. But going back to the prior bullet
11 point, the 30 percent?
12 A. Yes.
13 Q. I just want to confirm, that
14 30 percent, that average was based on that
15 store for that item; is that correct?
16 A. That is correct.
17 Q. Thank you.
18 Okay. So now I want to go --
19 take a step back and go through these bullet
20 points again. We've walked through most of
21 the process, but what I haven't asked is when
22 Walmart would report an order as suspicious.
23 So that's what I'm going to do now. Okay?
24 And by "report," I mean report

<p style="text-align: right;">Page 290</p> <p>1 an order to the DEA that Walmart has 2 determined to be suspicious. Okay? 3 I just want to give you kind of 4 where I'm going -- 5 A. Okay. 6 Q. -- so you're not surprised. So 7 let's go back to bullet point 1. Okay? And 8 under this policy, practice, or procedure, 9 described in bullet point 1, at what point 10 would Walmart report an order that was 11 suspicious to the DEA? 12 A. At the point at which we 13 determined it was suspicious. 14 Q. Okay. And who would make that 15 determination during this time period? And 16 now I'm talking about in connection with the 17 policy in bullet point 1. 18 A. So in the process that was 19 being followed, that would be logistics. 20 Q. And who -- what position or 21 what person at logistics would make that 22 determination? 23 MS. TABACCHI: Object to the 24 form.</p>	<p style="text-align: right;">Page 292</p> <p>1 day-to-day communication with DEA, that asset 2 protection manager was involved. The 3 operations managers were the managers that 4 were -- that were looking at these orders 5 that had been raised and following up. 6 Q. Let me try to get at that 7 question a different way. 8 Was there anyone at Walmart 9 that was responsible for reporting suspicious 10 orders to the DEA in connection with the 11 process, practice, or procedure outlined in 12 bullet point 1? 13 A. That would be the logistics DC 14 management team. 15 Q. So the team would be 16 responsible for the reporting; is that 17 correct? 18 A. Well, the management team had 19 different shifts, and so the management that 20 was responsible at that time -- they might 21 not all have been there. They weren't 22 collectively reporting those, but their 23 position -- they were in a position to have 24 that responsibility.</p>
<p style="text-align: right;">Page 291</p> <p>1 THE WITNESS: So those would be 2 the operations managers or the asset 3 protection manager that was onsite at 4 the distribution center. 5 Q. (BY MR. BOWER) Well, you 6 referenced an "or" in your answer. I'm 7 just -- I just want to put a finer point on 8 it. 9 Under the procedure reflected 10 in bullet point 1, who at Walmart was 11 responsible for reporting a suspicious order 12 to the DEA? 13 A. That would be the logistics 14 management at the point at which it was 15 determined to be suspicious. 16 Q. What does that mean, the 17 logistics management at the point it would be 18 determined to be suspicious? What does that 19 mean? 20 A. So there were logistics 21 operations managers that were involved in 22 that process. There was also an asset 23 protection manager onsite that -- that was 24 involved in much of the -- if there was</p>	<p style="text-align: right;">Page 293</p> <p>1 Q. (BY MR. BOWER) And are you 2 referring now to like the Mike Mullins and 3 Jeff Abernathys? 4 MS. TABACCHI: Object to the 5 form. 6 THE WITNESS: Yes. 7 Q. (BY MR. BOWER) Okay. Because 8 I think I understand what you're saying, 9 because Mr. Abernathy, for example, testified 10 that he would do some reports if he was the 11 first one in the office, for example. 12 Correct? 13 A. Correct. I read that in his 14 deposition. 15 Q. So under that circumstance, he 16 would be the one responsible for reporting to 17 the DEA a suspicious order? 18 MS. TABACCHI: Object to the 19 form. 20 THE WITNESS: If there was an 21 order that was identified in his 22 shift, he would be responsible for 23 that. 24 Q. (BY MR. BOWER) During this</p>

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1 time period, up until 2010, have you seen any
2 order that Walmart had reported to the DEA
3 that has been determined to be suspicious?
4 MS. TABACCHI: Object to the
5 form. Beyond the scope of the notice
6 as to geography.
7 THE WITNESS: No.
8 Q. (BY MR. BOWER) Not aware of
9 any; is that correct?
10 MS. TABACCHI: Object to the
11 form. Same objections.
12 THE WITNESS: Not aware of any.
13 Q. (BY MR. BOWER) And let's go,
14 then, to bullet point 3.
15 Was there policy practice or
16 procedure in bullet point 3 meant to identify
17 suspicious orders that were to be reported to
18 the DEA?
19 A. Bullet point 3 was part of the
20 process that we had in place to alert orders
21 that could be investigated to be determined
22 whether or not they were suspicious.
23 Q. Well, bullet point 3 didn't in
24 and of itself provide a procedure where a

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1 specific order on a specific day would be
2 identified; is that correct?
3 MS. TABACCHI: Object to the
4 form.
5 THE WITNESS: I don't think
6 I -- I don't think I understand what
7 you're asking.
8 Q. (BY MR. BOWER) And I
9 appreciate that. Bullet point 3 refers to
10 monthly reports; correct?
11 A. Correct.
12 Q. Okay. So those reports
13 wouldn't have been used during this time
14 period, at least, to identify an order that
15 came in on a specific day --
16 A. Now I understand the question.
17 Q. -- for you; correct?
18 A. Correct.
19 Q. So let's go to the next bullet
20 point. The 50-bottle. The 2001-2015,
21 50 bottles and 30 percent higher.
22 Do you see that?
23 A. Yes.
24 Q. Under that policy, practice, or

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1 procedure, who was responsible at Walmart for
2 reporting any order that was determined to be
3 suspicious?
4 MS. TABACCHI: Object to the
5 form.
6 THE WITNESS: So there were
7 some changes in that time frame that
8 occurred, toward the end of that time
9 frame. And so initially it would be
10 the same as I answered previously.
11 And then toward the end of that
12 time frame, there was a process that
13 was put in place that involved some
14 additional review by logistics at the
15 home office and practice compliance.
16 Q. (BY MR. BOWER) And then same
17 question for the next bullet point.
18 MS. TABACCHI: I'm sorry, Zach,
19 what bullet point are you on?
20 MR. BOWER: Sorry, we're on --
21 now we're at time period from
22 approximately 2012 to approximately
23 2015. Do you see that?
24 THE WITNESS: Yes.

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1 Q. (BY MR. BOWER) And now we're
2 looking at orders of oxy 30 more than 20 on a
3 weekly basis; correct?
4 A. Correct.
5 Q. And we were looking at orders
6 of Schedule II controlled substances in more
7 than 20 bottles on a weekly basis; correct?
8 A. Correct.
9 Q. During -- under this policy,
10 process, or procedure, was there anyone at
11 Walmart who had the specific responsibility
12 for reporting suspicious orders to the DEA?
13 MS. TABACCHI: Object to the
14 form. Asked and answered.
15 THE WITNESS: So this would be
16 similar to -- up until -- in the early
17 part of this time frame, it would have
18 been logistic associates. And then
19 toward the end of -- toward 2015 there
20 was -- August of 2014 was when the
21 policy was put in place for additional
22 review.
23 Q. (BY MR. BOWER) Okay. And
24 that's that policy 8377, right? That we

<p style="text-align: right;">Page 298</p> <p>1 looked at?</p> <p>2 A. That started in August of 2018.</p> <p>3 Q. Okay.</p> <p>4 A. I'm -- let me correct. 2014.</p> <p>5 Q. 2014. I was with you. Thank</p> <p>6 you.</p> <p>7 And then let me just close out</p> <p>8 these bullet points and then we can take a</p> <p>9 quick break.</p> <p>10 Was the -- looking at --</p> <p>11 starting with the 50 bottles and 30 percent</p> <p>12 rolling week average bullet point? Do you</p> <p>13 see that? Bullet point 4?</p> <p>14 A. Yes.</p> <p>15 Q. I'm now going to ask you</p> <p>16 whether these policies and procedures applied</p> <p>17 to orders for hydrocodone before hydrocodone</p> <p>18 was rescheduled to a Schedule II.</p> <p>19 Okay?</p> <p>20 A. Okay.</p> <p>21 Q. Was this bullet point</p> <p>22 applicable to orders of hydrocodone prior to</p> <p>23 its being reclassified as a Schedule II?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 300</p> <p>1 (Recess taken, 1:55 p.m. to</p> <p>2 2:13 p.m.)</p> <p>3 THE VIDEOGRAPHER: 2:13. We</p> <p>4 are on video record.</p> <p>5 Q. (BY MR. BOWER) Okay. We're</p> <p>6 back on the record. I want to continue going</p> <p>7 down through these bullet points and just</p> <p>8 kind of finish them off.</p> <p>9 Are you still on that page in</p> <p>10 front of you?</p> <p>11 A. Yes.</p> <p>12 Q. I want to talk for a minute ...</p> <p>13 As I'm sure you've seen from</p> <p>14 the transcripts, we've heard a lot about the</p> <p>15 enhanced thresholds in Reddwerks. Do you see</p> <p>16 that in the third bullet point up from the</p> <p>17 bottom there?</p> <p>18 A. Yes.</p> <p>19 Q. Can you describe for us what</p> <p>20 that means?</p> <p>21 A. Those were thresholds -- those</p> <p>22 were thresholds that were implemented in</p> <p>23 around August 2015. That made changes to the</p> <p>24 alert system in Reddwerks.</p>
<p style="text-align: right;">Page 299</p> <p>1 Q. Nothing different about that</p> <p>2 policy that applied to hydrocodone; is that</p> <p>3 correct?</p> <p>4 MS. TABACCHI: Object to the</p> <p>5 form.</p> <p>6 THE WITNESS: That is correct.</p> <p>7 Q. (BY MR. BOWER) And then the</p> <p>8 same question for the next bullet point.</p> <p>9 Anything different about the -- I guess the</p> <p>10 oxy 30 wouldn't apply, right?</p> <p>11 A. Yeah.</p> <p>12 Q. Okay.</p> <p>13 MS. TABACCHI: Right.</p> <p>14 THE WITNESS: This piece did</p> <p>15 not apply.</p> <p>16 Q. (BY MR. BOWER) Right, but what</p> <p>17 about the -- Schedule II wouldn't apply</p> <p>18 either; right? Because this wasn't a</p> <p>19 Schedule II?</p> <p>20 A. Correct.</p> <p>21 MR. BOWER: All right. Why</p> <p>22 don't we take a quick break.</p> <p>23 THE VIDEOGRAPHER: 1:55. We</p> <p>24 are off the video record.</p>	<p style="text-align: right;">Page 301</p> <p>1 Q. And were those changes the</p> <p>2 changes -- so strike that.</p> <p>3 Prior to those changes,</p> <p>4 Reddwerks was only alerting for as reflected</p> <p>5 in bullet point 4; is that correct?</p> <p>6 A. There were the alerts that were</p> <p>7 reflected in bullet point 4, correct.</p> <p>8 Q. So those alerts were in place</p> <p>9 until the enhanced Reddwerks -- enhanced</p> <p>10 thresholds in Reddwerks were implemented;</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. And that would include the</p> <p>14 minimum of ten bottles that we discussed</p> <p>15 earlier; correct?</p> <p>16 MS. TABACCHI: Object to the</p> <p>17 form.</p> <p>18 THE WITNESS: If I can correct</p> <p>19 what I just testified to.</p> <p>20 MR. BOWER: Sure.</p> <p>21 THE WITNESS: At some point the</p> <p>22 alert on the 20 bottles of oxy, that</p> <p>23 20-bottle alert was added into</p> <p>24 Reddwerks as well.</p>

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1 Q. (BY MR. BOWER) Do you recall
2 approximately when that was?
3 A. It was -- it was after the time
4 frame that the change was implemented. So it
5 was sometime in late 2012.
6 Q. Okay. With respect to the hard
7 limit for 20 bottles of oxy 30, did Walmart
8 ever implement any policy or procedure with
9 respect to whether stores could order more
10 than 20 bottles?
11 MS. TABACCHI: Object to the
12 form.
13 THE WITNESS: The order system
14 was based on a replenishment. So the
15 order limit was applied at the
16 distribution center.
17 Q. (BY MR. BOWER) So in other
18 words, a store was prevented from ordering
19 more than 20 bottles of oxy 30 at certain
20 time periods; is that correct?
21 A. That is correct. And we
22 implemented other policies on the dispensing
23 side of the business specific to oxy 30 to
24 help complement this distribution policy.

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1 Q. And how would those dispensing
2 policies complement the distribution policy?
3 A. We implemented a mandatory
4 prescription monitoring program check for all
5 oxycodone 30 prescriptions that our
6 pharmacists dispensed in states that allowed
7 for the pharmacist to have access to that
8 information.
9 Q. What was the basis that Walmart
10 focused its efforts on oxy 30?
11 A. We had a conversation with a
12 DEA agent that indicated that oxy 30 was
13 basically the drug that they were focusing
14 on. That they had seen issues with oxy 30,
15 and during that same conversation they
16 indicated that Walmart was not part of their
17 focus. But they were just sharing
18 information with us, and we reacted to that
19 information from the DEA.
20 Q. Do you recall approximately
21 when that conversation with the DEA took
22 place?
23 A. I believe it was in early 2012.
24 Q. And do you know who had that

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1 conversation with the DEA?
2 A. Tim Koch.
3 Q. Do you know who he spoke with
4 at the DEA?
5 A. I don't know the name of that
6 agent.
7 Q. Did you speak with Mr. Koch in
8 preparation for today's deposition?
9 A. I did not, but I had personal
10 knowledge of that conversation in 2012.
11 Q. And how did you have personal
12 knowledge of that conversation in 2012?
13 A. Because I was part of the group
14 that worked on the new policy related to
15 oxy 30.
16 Q. Other than the information that
17 Mr. Koch acquired from the DEA, did Walmart
18 ever come to understand that other opioid
19 products were highly abused drugs?
20 MS. TABACCHI: Object to the
21 form. Beyond the scope.
22 THE WITNESS: We were reacting
23 to that specific information that
24 seemed relevant. To call out one

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1 single item was really what our focus
2 was at that time.
3 Q. (BY MR. BOWER) And when
4 Walmart learned that this item was going to
5 be a focus, did it do any research or
6 investigation as to any other items that
7 should also be considered in its SOM program?
8 MS. TABACCHI: Object to the
9 form. Beyond the scope.
10 THE WITNESS: Our program and
11 practices all applied across the
12 boards. So to -- to the drugs that we
13 were dispensing. So we put the oxy 30
14 limit in place, and then we began
15 looking at all of those orders that
16 were over 20 as a follow-up to that
17 policy change.
18 (Whereupon, Deposition Exhibit
19 Walmart 8, Excel threshold
20 spreadsheet, WMT_MDL_00042877, was
21 marked for identification.)
22 Q. (BY MR. BOWER) So let me show
23 you what's been marked as Exhibit 8.
24 And just -- I'll make a

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1 statement for the record on Exhibit 8.
2 I believe this is the initial
3 Reddwerks enhancements. The Bates number as
4 reflected on the first page is 42877.
5 And what I did with this
6 document is we sorted by the stores that are
7 located in the CT-1 jurisdictions. Okay?
8 A. Okay.
9 Q. Are you following me?
10 A. Yes.
11 Q. Do you agree that document
12 No. 42877 would reflect the initial
13 thresholds that were implemented in
14 connection with the Reddwerks enhancement?
15 MS. TABACCHI: Objection, form.
16 Beyond the scope of the notice. The
17 witness was not prepared to testify
18 about any specific threshold. I
19 thought that there was an agreement
20 already.
21 MS. FUMERTON: Let's back up.
22 MR. BOWER: Let's stop for a
23 second. We're not having statements
24 on the record. If we want to go off

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1 the record, we can talk about it.
2 Okay? We're not doing this on the
3 record.
4 MS. FUMERTON: I need to
5 respond to your --
6 MR. BOWER: Not on the record.
7 MS. FUMERTON: -- to your
8 statement.
9 MR. BOWER: You don't need to
10 respond.
11 MS. FUMERTON: Well, this
12 doesn't have --
13 MR. BOWER: Okay. We're going
14 off the record.
15 MS. TABACCHI: We'd like to
16 have this on the record.
17 MR. BOWER: Okay. We can have
18 this on the record, but I will note
19 that this time is not counting against
20 my questioning. So you can make
21 statements on the record, but I can't
22 agree to allow you to make statements
23 on the record that counts against my
24 time.

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1 MS. FUMERTON: I made a
2 representation in an email, so that's
3 why I think that your statement or
4 question is different. And this is --
5 I mean, I don't know. Are you asking
6 her to verify what I said in my email
7 to you?
8 MR. BOWER: Yes. I'm just
9 asking whether these are the Reddwerks
10 thresholds that were in place when
11 Reddwerks was enhanced.
12 MS. FUMERTON: Nobody can
13 answer that based on this alone. In
14 other words, you can ask questions --
15 MR. BOWER: I'm not doing this
16 on the record. We're done on the
17 record. We can have a discussion off
18 the record.
19 MS. TABACCHI: Fine. We can go
20 off the record.
21 THE VIDEOGRAPHER: 2:21. We
22 are off the video record.
23 (Recess taken, 2:21 p.m. to
24 2:22 p.m.)

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1 THE VIDEOGRAPHER: 2:22. We
2 are on the video record.
3 Q. (BY MR. BOWER) We're back on
4 the record after a brief discussion off
5 record.
6 So you've been handed what's
7 been marked as Exhibit 8 for today's
8 deposition. Would you agree with me that
9 that document is 42877, as reflected on the
10 first page?
11 A. Yes.
12 Q. And that is a native Excel
13 document; is that correct? Or at least
14 appears to be?
15 A. Yes.
16 Q. Are you, as you sit here today,
17 familiar or able to testify that document
18 No. 42877 reflects the initial enhancements
19 in Reddwerks on or about August of 2015?
20 MS. TABACCHI: Object to the
21 question as beyond the scope of the
22 notice pursuant to the agreements that
23 have been reached previously with
24 counsel and the representations that

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1 were made by counsel to you with an
2 understanding that you were not going
3 to ask the witness about particular
4 thresholds, which is what you're
5 attempting to do now.
6 Q. (BY MR. BOWER) Can you -- do
7 you want me to read back that question?
8 A. Yes, please.
9 Q. Are you able to confirm for us
10 that Document 42877 reflects Walmart's
11 initial thresholds that were implemented into
12 Reddwerks in connection with the Reddwerks
13 enhancements?
14 MS. TABACCHI: Same objections.
15 THE WITNESS: I don't see a
16 date on this, so I -- so I don't know.
17 Q. (BY MR. BOWER) Okay. Well,
18 it's an Excel document, so it wouldn't be
19 dated; correct?
20 MS. TABACCHI: Object to the
21 form. Same objections.
22 THE WITNESS: There is no other
23 attachment for me to review from a
24 date perspective.

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1 Q. (BY MR. BOWER) Well, this is a
2 Walmart document. It was produced in
3 connection with this case.
4 Do you disagree with that?
5 MS. TABACCHI: Object to the
6 form. Beyond the scope of the notice.
7 THE WITNESS: I don't object to
8 the production. I just don't know
9 what context. Because this is an
10 Excel spreadsheet, I don't know what
11 context it was presented in.
12 Q. (BY MR. BOWER) Are you
13 prepared to testify as to how Walmart
14 determined what the thresholds would be in
15 connection with the Reddwerks enhancement?
16 A. Yes.
17 Q. And how did Walmart do that?
18 A. Can you give me time frame?
19 Q. The initial thresholds.
20 A. The initial thresholds?
21 Q. Yes.
22 A. The initial thresholds, and so
23 we're speaking about the time frame period
24 from -- starting in 2011?

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1 Q. No. My question is Reddwerks
2 enhancements.
3 A. The enhanced --
4 Q. Yes.
5 A. Okay. Thank you.
6 Q. Yeah. Sorry.
7 A. The enhanced thresholds were
8 calculated using a year's worth of shipment
9 data, and then applying a formula, which was
10 the average weekly order, plus three standard
11 deviations over that 52-week shipment date.
12 Q. And when that formula was used,
13 would that provide the enhancements for a
14 particular store?
15 MS. TABACCHI: Object to the
16 form.
17 THE WITNESS: It was store and
18 item specific. And there were
19 additional defaults that were applied
20 to those thresholds as they were
21 calculated.
22 Q. (BY MR. BOWER) And can you
23 describe for us how those defaults -- let me
24 break that down a little bit.

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1 How did Walmart go about
2 determining what the defaults would be?
3 A. So again, based on enhancing
4 what we had in place, we continued to use
5 that 50-unit limit. It was applied a little
6 bit differently in this context because we
7 took -- we took the dosage units and dropped
8 those down to item units to not exceed
9 5,000 units.
10 There was a default minimum
11 alert of 2,000 units applied, and then for
12 non-traited items for that location, there
13 was a limit set for a thousand dosage units.
14 Q. And I just have a couple of
15 questions to follow up on that. But let me
16 ask you this: What do you mean by
17 "non-traited items for that location"?
18 A. So the -- for certain items, we
19 might have had two supplier agreements in
20 place. And so stores would be traited for
21 one supplier's item. And that normally
22 happened when there could be supply
23 interruption.
24 And so if, for some reason, the

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1 traited item was unavailable and a store
 2 attempted to order a non-traited item, that
 3 non-trait -- that non-traited item could be
 4 switched when there were supply issues, but
 5 there were controls that were put in place to
 6 make sure that the -- they stayed with that
 7 traited item for their store.
 8 Q. And how would Walmart go about
 9 determining what manufacturer would be a
 10 traited item for a particular store?
 11 MS. TABACCHI: Objection,
 12 beyond the scope.
 13 THE WITNESS: That was
 14 something that the buyers would work
 15 out with replenishment based on
 16 contract and geography.
 17 Q. (BY MR. BOWER) And that
 18 information was somewhere within the
 19 documents that Walmart used to calculate the
 20 Reddwerks enhancement; is that correct?
 21 MS. TABACCHI: Object to the
 22 form. Beyond the scope.
 23 THE WITNESS: May I clarify?
 24 Q. (BY MR. BOWER) Sure.

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1 A. You're asking how we identified
 2 non-traited items?
 3 Q. Yes.
 4 A. That would be in our
 5 replenishment system and would have been
 6 applied, because the NDC was --
 7 Q. Right.
 8 A. -- was specific.
 9 Q. In other words, the thresholds
 10 that went into Reddwerks in connection with
 11 the Reddwerks enhancement had different
 12 thresholds that depended, at least in part,
 13 on whether the item was traited for a store
 14 or not traited for that store; is that
 15 correct?
 16 A. That is correct.
 17 Q. And I think you mentioned, and
 18 I just want to make sure that it's clear,
 19 that if an item was not traited for that
 20 store, the minimum threshold would be --
 21 well, strike that.
 22 If an item was not traited for
 23 a store, was there a minimum threshold in
 24 connection with the Reddwerks enhancements

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1 for Controlled-II substances?
 2 A. There was.
 3 Q. What was that minimum
 4 threshold?
 5 A. The minimum threshold was
 6 1,000 units.
 7 Q. And if an item was traited for
 8 that store, what was the minimum threshold
 9 for a Controlled-II substance?
 10 MS. TABACCHI: Object to the
 11 form, asked and answered.
 12 THE WITNESS: 2000 units.
 13 Q. (BY MR. BOWER) Okay. And
 14 again, we're talking about units on a weekly
 15 basis; is that correct?
 16 A. Correct.
 17 Q. Did Walmart ever consider using
 18 thresholds based on a monthly basis?
 19 MS. TABACCHI: Object to the
 20 form. Beyond the scope.
 21 THE WITNESS: Not to my
 22 knowledge, in the information I've
 23 reviewed about threshold development.
 24 Q. (BY MR. BOWER) Why did

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1 Walmart, in designing its suspicious order
 2 monitoring program, review orders on a weekly
 3 basis as opposed to a monthly basis?
 4 MS. TABACCHI: Object to the
 5 form.
 6 THE WITNESS: We looked at the
 7 orders as they were being filled. And
 8 so each order that was placed or
 9 filled was what we were reviewing, and
 10 that was weekly within our system.
 11 The order occurred weekly, as I
 12 explained, on a single day of the
 13 week.
 14 Q. (BY MR. BOWER) Let me ask you
 15 this. When we're talking about a traited
 16 product, can you describe what specifically
 17 that means?
 18 Is it specific to an NDC
 19 number?
 20 MS. TABACCHI: Object to the
 21 form.
 22 THE WITNESS: It would be -- a
 23 traited item would be at the NDC
 24 level. It's -- another way to think

<p style="text-align: right;">Page 318</p> <p>1 about it is the item that is 2 preferred. It's a term that's used in 3 our replenishment system that just 4 shows which item for the system to 5 pick, because that's the trait or the 6 preferred item for that location, 7 based on the alignment in 8 replenishment. 9 Q. (BY MR. BOWER) Let me just ask 10 you a question, if you could turn back to 11 that exhibit, the Excel spreadsheet. 12 And I just want to -- I'm a 13 little bit confused, so if you compare -- do 14 you see the number all the way in the left 15 there? 16 The number column? 17 A. Yes. 18 Q. Okay. I'm just looking at, for 19 example -- well, let me lay the foundation 20 for a moment. 21 Are you familiar with the 22 column headings on the top of this, what 23 those mean? 24 MS. TABACCHI: I'm sorry,</p>	<p style="text-align: right;">Page 320</p> <p>1 No. 1857 based on the threshold numbers? 2 MS. TABACCHI: Objection, 3 beyond the scope. 4 THE WITNESS: Those are above 5 the threshold that was set for 6 non-traited, so it does appear that 7 they -- 8 I think it -- I think it also 9 speaks to time frame, that these are 10 initial -- the minimum here would have 11 been 2,000 for a traited item, the 12 minimum threshold would have been. 13 Q. (BY MR. BOWER) And I'm just 14 trying to -- and maybe it's my 15 misunderstanding. I'm just trying to 16 understand how the traited policy worked 17 again. 18 It's correct that even an 19 item -- if an item is identical, but is 20 manufactured by a different manufacturer, has 21 a different NDC number; correct? 22 A. Correct. 23 Q. And so, in that circumstance, 24 how, if at all, would the traited thresholds</p>
<p style="text-align: right;">Page 319</p> <p>1 you're asking her now about Exhibit 8? 2 MR. BOWER: Yeah. 3 THE WITNESS: Yes, I understand 4 those. 5 Q. (BY MR. BOWER) And so if -- I 6 just want to now compare for a moment, in the 7 context of this discussion we're having on 8 traited items; okay? 9 A. Yes. 10 Q. If you compare, for example, 11 number -- row 29 with row 40. 12 Do you see those? 13 A. Yes. 14 Q. Those are both oxycodone 15 30 milligrams; correct? 16 MS. TABACCHI: Object to the 17 form. 18 THE WITNESS: Yes. 19 Q. (BY MR. BOWER) But one is -- 20 one has HCL and one does not; right? 21 A. Correct. 22 Q. Okay. So does it appear to 23 you, from looking at those items, that both 24 of those items were traited for Store</p>	<p style="text-align: right;">Page 321</p> <p>1 affect the threshold -- the threshold for 2 that item? 3 MS. TABACCHI: Object to the 4 form. 5 MR. BOWER: I'll strike that. 6 Q. (BY MR. BOWER) In that 7 circumstance, how would whether an item is 8 traited for that store affect the thresholds? 9 MS. TABACCHI: Object to the 10 form. 11 THE WITNESS: The non-traited 12 item would have a lower threshold. 13 Q. (BY MR. BOWER) So let's go 14 back, then, to Walmart's combined discovery 15 responses, the same bullet point. 16 Okay? Three up from the 17 bottom. 18 A. Yes. 19 Q. Okay. Now, we can look at what 20 the thresholds are when we look at the Excel 21 spreadsheets; correct? 22 MS. TABACCHI: Object to the 23 form. Beyond the scope of the notice. 24 THE WITNESS: So this has been</p>

<p style="text-align: right;">Page 322</p> <p>1 represented that these are the --</p> <p>2 Q. (BY MR. BOWER) Yes.</p> <p>3 A. -- the thresholds.</p> <p>4 Q. I just want to confirm that the</p> <p>5 thresholds would be reflected in the</p> <p>6 spreadsheets that were provided to Reddwerks.</p> <p>7 Correct?</p> <p>8 MS. TABACCHI: Object to the</p> <p>9 form.</p> <p>10 THE WITNESS: The initial</p> <p>11 thresholds in the enhanced model were</p> <p>12 loaded by Reddwerks.</p> <p>13 Q. (BY MR. BOWER) And then Walmart</p> <p>14 subsequently changed those thresholds over</p> <p>15 time; correct?</p> <p>16 MS. TABACCHI: Object to the</p> <p>17 form.</p> <p>18 MR. BOWER: I'll strike that.</p> <p>19 Q. (BY MR. BOWER) From time to</p> <p>20 time, those thresholds would change for a</p> <p>21 particular store or a particular item;</p> <p>22 correct?</p> <p>23 A. After review, they could</p> <p>24 change.</p>	<p style="text-align: right;">Page 324</p> <p>1 referring to the binder that you</p> <p>2 brought today?</p> <p>3 THE WITNESS: I am. Because my</p> <p>4 recollection is that there was a</p> <p>5 process for reviewing thresholds and</p> <p>6 making adjustments that was</p> <p>7 documented, but it was upon decision</p> <p>8 by practice compliance to understand</p> <p>9 the nature of the needed request.</p> <p>10 Q. (BY MR. BOWER) Would you agree</p> <p>11 that when Walmart made the decision to</p> <p>12 increase a store's threshold, that the</p> <p>13 reasons for the increase would have been</p> <p>14 documented?</p> <p>15 MS. TABACCHI: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: The evaluations</p> <p>18 that occurred after the Reddwerks</p> <p>19 enhancements, those evaluations were</p> <p>20 documented.</p> <p>21 Q. (BY MR. BOWER) Okay. Other</p> <p>22 than the two examples you gave us, which</p> <p>23 were, I believe, a change in whether the item</p> <p>24 was traited for the store, and then some</p>
<p style="text-align: right;">Page 323</p> <p>1 Q. Okay. And then, what would</p> <p>2 be -- from a general policy or procedure,</p> <p>3 what would be the reasons that a threshold</p> <p>4 would change?</p> <p>5 A. It could be for a change in</p> <p>6 trait could possibly change the threshold.</p> <p>7 It could be that a pharmacy's</p> <p>8 orders had been reviewed over time. They</p> <p>9 were -- they would trigger a threshold.</p> <p>10 They were reviewed and cleared</p> <p>11 as appropriate, and so there was a period --</p> <p>12 there were -- when there were repeat</p> <p>13 instances of that, the threshold might be</p> <p>14 raised.</p> <p>15 Those were the types of</p> <p>16 threshold changes that could occur.</p> <p>17 Q. And were there -- strike that.</p> <p>18 Did Walmart have any written</p> <p>19 policies or procedures with respect to when</p> <p>20 it was appropriate to raise a threshold?</p> <p>21 MS. TABACCHI: Object to the</p> <p>22 form.</p> <p>23 MR. BOWER: Just for the</p> <p>24 record, while you're looking, you're</p>	<p style="text-align: right;">Page 325</p> <p>1 basis for an increase in threshold based on a</p> <p>2 review of the store's order history, are</p> <p>3 there any other circumstances that would lead</p> <p>4 to a threshold being changed?</p> <p>5 MS. TABACCHI: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: There may have</p> <p>8 been others. I don't recall</p> <p>9 specifically.</p> <p>10 Q. (BY MR. BOWER) Are you</p> <p>11 prepared to testify on that today?</p> <p>12 MS. TABACCHI: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: Yes, I am.</p> <p>15 Q. (BY MR. BOWER) Okay. So other</p> <p>16 than the two examples you've given us, are</p> <p>17 there any other reasons that Walmart would</p> <p>18 adjust a store and item-specific threshold</p> <p>19 after Reddwerks enhancements took effect?</p> <p>20 A. If a new store came onboard,</p> <p>21 that was another reason that a threshold</p> <p>22 might be adjusted. Those are the -- those</p> <p>23 are the circumstances that I'm aware of.</p> <p>24 Q. So let's go back, then, to the</p>

<p style="text-align: right;">Page 326</p> <p>1 bullet point in the combined discovery 2 responses for a moment if we could. Same 3 bullet point referencing the enhanced 4 thresholds in Reddwerks. 5 So Walmart states that it 6 "implemented enhanced thresholds in Reddwerks 7 and the tiered review process." 8 Do you see that? 9 A. Yes. 10 Q. What is meant by a tiered 11 review process? 12 A. The process began to move -- 13 still the process at the distribution center 14 was in place. But those alerts were then 15 reviewed by the logistics compliance team. 16 And then the tiering was that practice 17 compliance also was involved. So there were 18 additional teams that were involved in the 19 review. 20 Q. And is that tiered review 21 process reflected in any one of these written 22 policies and procedures on the previous page? 23 A. Yes. 24 Q. Okay.</p>	<p style="text-align: right;">Page 328</p> <p>1 enhancements review orders for whether they 2 deviated substantially from a normal pattern? 3 MS. TABACCHI: Object to the 4 form. 5 MR. BOWER: I'll strike that. 6 Q. (BY MR. BOWER) Did the 7 Reddwerks enhancements review orders for 8 controlled substances for whether they 9 deviated substantially from a normal pattern? 10 MS. TABACCHI: Object to the 11 form. 12 THE WITNESS: The alerts that 13 were implemented were based on the 14 store's order average, and those were 15 alerted and further analysis was 16 completed. 17 Q. (BY MR. BOWER) Well, let's 18 say, for example, a store orders under its 19 threshold of 20 bottles. Okay? 20 A. Okay. 21 Q. How would Reddwerks review 22 those orders for whether they were -- 23 deviated substantially from a normal pattern? 24 MS. TABACCHI: Object to the</p>
<p style="text-align: right;">Page 327</p> <p>1 A. And those would be -- and 2 again, I have these in date order. 3 Q. Or if you give me the date, I 4 can point you to the tab. I have the dates 5 in front of me. 6 A. Sure. That tiered review 7 process started in 2015, the Bates No. 963 -- 8 Q. Okay. 9 A. -- on the distribution center 10 policy. 11 Q. Okay. So that would be tab 4 12 of Exhibit 7. If you could just confirm. 13 Turn to tab 4. 14 A. And actually, it's in effect in 15 September. So tab 3. It's also in effect in 16 this policy as well. 17 Q. Okay. So the tiered review 18 process that is referenced in the bullet 19 point three up from the bottom on the 20 following page is reflected in both tabs in 3 21 and 4; is that correct? 22 A. It is. That is correct. It's 23 reflected in the procedure. 24 Q. Now, how did the Reddwerks</p>	<p style="text-align: right;">Page 329</p> <p>1 form. 2 THE WITNESS: If it was under 3 the threshold, it would not alert. 4 Q. (BY MR. BOWER) And that's true 5 even if an order deviated substantially from 6 a normal pattern; correct? 7 MS. TABACCHI: Object to the 8 form. 9 THE WITNESS: In this case, the 10 alert would be based on the store's 11 pattern, so it would not alert. 12 Q. (BY MR. BOWER) And if an order 13 deviated -- strike that. 14 If an order was of unusual 15 frequency but it was less than 20, it would 16 not alert under the Reddwerks enhancements; 17 correct? 18 MS. TABACCHI: Object to the 19 form. 20 THE WITNESS: We still, from a 21 frequency perspective, had -- had 22 control from a manual perspective. So 23 there was -- there was a process that 24 was visible if a manual order was</p>

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1 placed and there was a change in that
2 frequency from the established order
3 date.
4 Q. (BY MR. BOWER) And that's the
5 process we described earlier where the
6 associates of the DC would review the orders;
7 correct?
8 MS. TABACCHI: Object to the
9 form.
10 THE WITNESS: This is in -- in
11 this time frame, that was part of the
12 review that was conducted, was what
13 the order pattern would have been.
14 Q. (BY MR. BOWER) And that was
15 done by the associates at the DC; correct?
16 MS. TABACCHI: Object to the
17 form.
18 THE WITNESS: The associates in
19 the DC were completing their reviews,
20 and as well as reviews then through
21 the tiered process that included a
22 review of those patterns.
23 Q. (BY MR. BOWER) But an order
24 during this time period wouldn't enter the

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1 tiered process of review unless it was
2 flagged at one of the associates; correct?
3 MS. TABACCHI: Object to the
4 form.
5 THE WITNESS: Flagged if there
6 was an indication of an issue.
7 Q. (BY MR. BOWER) Are you
8 familiar with the term "SOM remediation"?
9 A. I am, in our policy.
10 Q. Okay. And what does that mean?
11 A. That means that a pharmacy has
12 had an order alerted, and they -- and they
13 were put on a plan to address their ordering
14 pattern. So it's a -- it's a plan, and it's
15 in a policy. So let me just turn to the
16 policy.
17 Q. Sure. Thank you.
18 A. Which I also had tabbed. POM
19 remediation is in the policy -- at least
20 there's a reference -- and this may not be
21 the only reference, but the policy that is
22 the practice compliance policy, January 2015.
23 Q. Okay. And the Bates number on
24 that, is that 4237?

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1 A. It is 4237.
2 Q. Thank you.
3 A. And it appears on the second --
4 page 2 of 3.
5 Q. Okay.
6 And I have seen it in the
7 documents. But can you provide any more
8 specificity as to what -- I'll strike that.
9 How would a SOM remediation
10 impact a store's threshold, if at all?
11 MS. TABACCHI: Object to the
12 form.
13 THE WITNESS: So this -- the
14 threshold would be applied through
15 monitoring of the store's orders,
16 because there was -- at least at the
17 time of this policy, there was not the
18 ability to quickly adjust the
19 replenishment system. And so the
20 process for a threshold adjustment did
21 include some cutting of orders to
22 impact that replenishment system that
23 we didn't have ready access to.
24 Q. (BY MR. BOWER) When would a

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1 store be under SOM remediation?
2 A. The -- if a store had a
3 suspicious order identified and reported to
4 the DEA, they would go into a remediation
5 plan.
6 Q. And is that the only
7 circumstance under which your store would be
8 under SOM remediation?
9 MS. TABACCHI: Object to the
10 form.
11 THE WITNESS: Yes. That was
12 the policy.
13 Q. (BY MR. BOWER) And so on that
14 policy, once a store has an order reported to
15 DEA, that store's thresholds are reduced; is
16 that correct?
17 MS. TABACCHI: Object to the
18 form.
19 THE WITNESS: Their orders
20 would be monitored so that any
21 system-generated order might be
22 reduced.
23 Again, it would depend on the
24 nature of the suspicious order that

<p style="text-align: right;">Page 334</p> <p>1 was placed at review of the business. 2 And so because the replenishment 3 system was automated, they did adjust 4 orders for a period of time until the 5 replenishment system could catch up. 6 Q. (BY MR. BOWER) And when you say 7 "reduced," do you mean cut to a certain 8 member? 9 MS. TABACCHI: Object to the 10 form. 11 THE WITNESS: Reduced. Cut. 12 They were reduced, yes. 13 Q. (BY MR. BOWER) Let me just take 14 a step back for a moment. You've referenced 15 the replenishment system and the orders 16 therein a couple of times. 17 Can you just describe how that 18 works? 19 MS. TABACCHI: Object to the 20 form. Beyond the scope. 21 THE WITNESS: The replenishment 22 system looks at the dispensing needs 23 of the pharmacy. 24 And this is across any product.</p>	<p style="text-align: right;">Page 336</p> <p>1 get a sense of how many orders, what 2 percentage of orders came into the DC 65 3 [sic] that were a replenishment order, an 4 automated order. 5 MS. TABACCHI: Object to the 6 form. 7 Q. (BY MR. BOWER) Do you have any 8 knowledge on that? 9 MS. TABACCHI: Object to the 10 form. Beyond the scope. 11 THE WITNESS: I don't know what 12 that number was. 13 Q. (BY MR. BOWER) Do you have any 14 approximation as to how many -- for a typical 15 store, would their orders typically be 16 replenishment orders or manual orders? 17 MS. TABACCHI: Same objections. 18 THE WITNESS: The vast majority 19 of orders were replenishment orders. 20 Q. (BY MR. BOWER) Other than 21 Walmart limiting the replenishment orders for 22 oxy 30, which we discussed, did Walmart ever 23 limit the replenishment orders of any other 24 products?</p>
<p style="text-align: right;">Page 335</p> <p>1 This is not unique to controlled 2 substances. 3 And then based on the 4 dispensing data, based on on-hands 5 that are set in the pharmacy 6 dispensing system to show what is in 7 stock at that pharmacy, the 8 replenishment system would resupply 9 that pharmacy. 10 There were some -- there was 11 some trending that went on. And that 12 was generally due to things like -- 13 again, because we were doing this over 14 a period of time, what was the demand 15 that -- what day of the week was the 16 order placed. I mean, there were -- 17 there were multiple factors that went 18 into the replenishment system, but it 19 was -- it was an automated system that 20 looked back at -- at patterns of order 21 and then took into account the stock 22 that was available. 23 Q. (BY MR. BOWER) And with 24 respect to Controlled-IIs, I'm just trying to</p>	<p style="text-align: right;">Page 337</p> <p>1 MS. TABACCHI: Object to the 2 form. Beyond the scope. 3 Q. (BY MR. BOWER) Well, strike 4 that. 5 Walmart limited replenishment 6 orders for oxy 30 in connection with its 7 suspicious order monitoring program, did it 8 not? 9 A. We -- we set thresholds for 10 oxy 30 based on conversations with the DEA. 11 And so from a due diligence perspective, we 12 put those limits in place. 13 The other -- the other limits 14 that we have are the thresholds that we've 15 been discussing. 16 Q. (BY MR. BOWER) So other than 17 oxy 30, Walmart never limited, from a 18 replenishment perspective, orders of other 19 Controlled-II substances; that is correct? 20 MS. TABACCHI: Object to the 21 form. Beyond the scope. 22 THE WITNESS: No single item or 23 specific threshold set. 24 Q. (BY MR. BOWER) Walmart is</p>

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1 familiar with the Masters Pharmaceuticals
2 decision, is it not?
3 A. Yes.
4 Q. When did Walmart first become
5 aware of the Masters Pharmaceutical case?
6 MS. TABACCHI: Objection,
7 beyond the scope.
8 THE WITNESS: We were aware
9 after the decision in 2017.
10 Q. (BY MR. BOWER) Was Walmart
11 aware before that decision came out?
12 MS. TABACCHI: Object to the
13 form. Beyond the scope.
14 Are you asking whether Walmart
15 was aware of a decision before it
16 issued?
17 MR. BOWER: Yes.
18 THE WITNESS: No.
19 Q. (BY MR. BOWER) All right. So
20 just to be clear, my question is whether
21 Walmart was aware of the Masters
22 Pharmaceutical case the DEA brought against
23 them. Was Walmart aware of that?
24 MS. TABACCHI: Object to the

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1 form.
2 THE WITNESS: At the time the
3 decision was made, we were aware of
4 that decision.
5 Q. (BY MR. BOWER) What about
6 before that decision? Was Walmart aware that
7 the DEA was prosecuting a case against
8 Masters Pharmaceuticals?
9 MS. TABACCHI: Object to the
10 form. Beyond the scope.
11 THE WITNESS: Not to my
12 knowledge.
13 (Whereupon, Deposition Exhibit
14 Walmart 9, September 2015 email chain.
15 Subj: Areas of Focus - Week 35,
16 WMT_MDL_000048214-48215, was marked
17 for identification.)
18 MR. BOWER: Can you just read
19 the Bates number for that into the
20 record? Make sure I gave you the
21 right number.
22 THE WITNESS: 48214.
23 MR. BOWER: All right. Thank
24 you.

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1 Sorry about that.
2 Q. (BY MR. BOWER) So you've been
3 handed what's been marked as Exhibit 9 to
4 today's deposition.
5 Just take a moment and look at
6 the document.
7 These are two folks I believe
8 you testified that you spoke with in
9 connection with today's deposition.
10 A. I did not speak to Tim Koch.
11 Q. Okay.
12 A. In preparation.
13 Q. Okay. Thank you for that
14 clarification.
15 [Document review.]
16 Q. (BY MR. BOWER) Have you had a
17 chance to review the document?
18 A. Yes.
19 Q. You did speak with
20 Miranda Johnson in preparation for today's
21 deposition; correct?
22 A. Yes.
23 Q. Did you speak with her
24 regarding the Masters Pharmaceutical case?

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1 MS. TABACCHI: Object to the
2 form.
3 THE WITNESS: I spoke to her in
4 relation to our response following the
5 decision.
6 MR. BOWER: Okay.
7 Q. (BY MR. BOWER) What do you
8 mean by "our response following the
9 decision"?
10 A. My changes that were made to
11 our order monitoring program after the
12 Masters -- that was impacted by the Masters
13 decision.
14 Q. Did Walmart wait until the
15 decision came out to make those changes?
16 MS. TABACCHI: Object to the
17 form. Beyond the scope.
18 Q. (BY MR. BOWER) Strike that.
19 Did Walmart make changes to its
20 suspicious order monitoring in connection
21 with Masters Pharmaceuticals?
22 MS. TABACCHI: Object to the
23 form. I would ask that you clarify.
24 The notice speaks of a December 2017

<p style="text-align: right;">Page 342</p> <p>1 decision. If you're asking about 2 another Masters decision, please 3 clarify for the record so there's no 4 confusion. 5 Q. (BY MR. BOWER) Do you agree 6 that Walmart was aware of the DEA case 7 against Masters prior to 2017? 8 MS. TABACCHI: This is beyond 9 the scope of the notice. The witness 10 can testify in her individual 11 capacity. 12 THE WITNESS: I see the 13 information in this email exchange. 14 Q. (BY MR. BOWER) And are you 15 aware that -- strike that. 16 During this time period, was 17 Walmart a member of the NACDS? 18 MS. TABACCHI: Object to the 19 form. 20 THE WITNESS: Yes. 21 Q. (BY MR. BOWER) Are you aware 22 that sometime in between September of 2015 23 and the time frame of the Masters decision, 24 NACDS submitted an amicus brief in the</p>	<p style="text-align: right;">Page 344</p> <p>1 know the specifics around that 2 communication. 3 Q. (BY MR. BOWER) As a member of 4 the policy -- when were you a member of the 5 policy council for NACDS? 6 A. 2007 to present. 7 Q. As a member of the policy 8 counsel, would you not have reviewed amicus 9 briefs submitted in connection with 10 suspicious order monitoring? 11 MS. TABACCHI: Object to the 12 form. 13 THE WITNESS: No. That was -- 14 there were other groups, and there was 15 a group -- a legal group that reviewed 16 and worked on amicus briefs, and I was 17 not a -- I was not a member of that. 18 Q. (BY MR. BOWER) Was anyone from 19 Walmart aware that the NACDS would be 20 submitting an amicus brief in the Masters 21 case prior to its submission? 22 MS. TABACCHI: Object to the 23 form. Beyond the scope. 24 THE WITNESS: Through</p>
<p style="text-align: right;">Page 343</p> <p>1 Masters case? 2 MS. TABACCHI: Object to the 3 form. 4 THE WITNESS: We weren't party 5 to the amicus brief. 6 Q. (BY MR. BOWER) That wasn't my 7 question. Can you -- I'll read back my 8 question. Okay? 9 Are you aware that sometime 10 between September of 2015 and the time frame 11 of the Masters decision in 2017, that the 12 NACDS submitted an amicus brief in the 13 Masters case? 14 MS. TABACCHI: I'm just going 15 to caution the witness not to reveal 16 the substance of communications with 17 counsel. If you are aware of the 18 answer to Ms. Bower's question without 19 having discussed that with counsel, 20 you may answer. 21 THE WITNESS: I'm a member of 22 the NACDS Policy Council. And so 23 there may have been communication 24 about the Masters decision. I don't</p>	<p style="text-align: right;">Page 345</p> <p>1 communication in policy council, it 2 may have -- it may have come up as a 3 topic. It likely did come up. I 4 don't have recollection of the timing 5 or the details of that information. 6 Q. (BY MR. BOWER) Would you agree 7 that Walmart made changes to its suspicious 8 order monitoring program after the Masters 9 decision came out in 2017? 10 MS. TABACCHI: Object to the 11 form. 12 THE WITNESS: The changes that 13 we made were how we reported the 14 orders that we were reviewing. 15 Q. (BY MR. BOWER) Would you agree 16 that Walmart began reporting more orders as a 17 result of Masters Pharmaceutical's decision? 18 MS. TABACCHI: Object to the 19 form. 20 THE WITNESS: We reported 21 orders of interest, and that was at a 22 rate that was higher than -- we had -- 23 we had not previously been reporting 24 orders of interest before due</p>

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1 diligence was applied to those orders.
2 MR. BOWER: Why don't we take a
3 quick break.
4 MS. TABACCHI: Sure.
5 MR. BOWER: We can be quick, if
6 you want. I don't know how long you
7 need.
8 THE VIDEOGRAPHER: 3:00 p.m.
9 We are off the video record.
10 (Recess taken, 3:00 p.m. to
11 3:22 p.m.)
12 THE VIDEOGRAPHER: 3:22. We
13 are on the video record.
14 Q. (BY MR. BOWER) We are back on
15 the record. Let me hand you what is marked
16 as Exhibit 10, which is a copy of the Masters
17 decision. Take a moment to review it, but I
18 assume you're familiar with that decision;
19 correct?
20 MS. TABACCHI: Just have her
21 look at it, please.
22 (Whereupon, Deposition Exhibit
23 Walmart 10, Masters decision, was
24 marked for identification.)

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1 MS. TABACCHI: I did review the
2 decision in preparation.
3 Q. (BY MR. BOWER) Do you have a
4 copy of the decision in the binder you
5 brought with you today?
6 A. Yes.
7 Q. Does the copy that you have in
8 the binder have a Bates number on it?
9 A. It does not. It's one that I
10 printed.
11 Q. So I know there was
12 representation made that --
13 MS. TABACCHI: That would be
14 the one exception, something from a
15 public record.
16 MR. BOWER: No, that's fine.
17 MS. TABACCHI: I thought of
18 that when she mentioned she had it.
19 Otherwise, I'm not aware of anything
20 else. It's either produced or in the
21 public record. There was nothing
22 else.
23 MR. BOWER: Thank you for that.
24 Q. (BY MR. BOWER) So I want to

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1 have -- I have a few questions on the
2 decision. Feel free to review the one in the
3 binder or the one I've given you. They
4 should be identical.
5 A. I believe they're identical.
6 Q. Did you review this decision in
7 preparation for your testimony today?
8 A. Yes.
9 Q. And did the folks at Walmart
10 review the decision when it was issued?
11 MS. TABACCHI: Object to the
12 form. Beyond the scope.
13 THE WITNESS: Based on
14 communication and changes that were
15 applied to how we reported orders of
16 interest, the answer is yes.
17 Q. (BY MR. BOWER) So if you just
18 turn -- look at the first page of the
19 Masters, right at the beginning there under
20 the opinion -- are you with me there?
21 The Court notes that -- about
22 two sentences down, that "Over the past two
23 decades, DEA has been battling a steep
24 increase in prescription opioid abuse, a

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1 problem DEA views as epidemic."
2 Do you see that?
3 MS. TABACCHI: I'm sorry, Zach.
4 I don't see where you are.
5 MR. BOWER: Sorry. Just on the
6 first page, bottom right-hand corner,
7 about the middle of that paragraph,
8 right under "Opinion."
9 MS. TABACCHI: The Court
10 notes -- oh, "The Court notes." Those
11 are your words.
12 MR. BOWER: Those are my words.
13 MS. TABACCHI: I'm trying to
14 find the Court notes.
15 MR. BOWER: Sorry about that.
16 MS. TABACCHI: Can you do that
17 again?
18 MR. BOWER: Sure.
19 Q. (BY MR. BOWER) The language in
20 the opinion reads, "Over the past two
21 decades, DEA has been battling a steep
22 increase in prescription opioid abuse, a
23 problem that DEA views as an epidemic."
24 Do you see that?

<p style="text-align: right;">Page 350</p> <p>1 A. Yes.</p> <p>2 Q. Does Walmart have a similar</p> <p>3 feeling that there's been an opioid epidemic</p> <p>4 for the past two decades?</p> <p>5 MS. TABACCHI: Object to the</p> <p>6 form. Beyond the scope.</p> <p>7 THE WITNESS: We are aware of</p> <p>8 the issues, the health issues related</p> <p>9 to the opioid crisis, epidemic,</p> <p>10 however it's referred to in ...</p> <p>11 Q. (BY MR. BOWER) And does Walmart</p> <p>12 disagree that the crisis has been going on</p> <p>13 for approximately two decades?</p> <p>14 MS. TABACCHI: Object to the</p> <p>15 form. Beyond the scope of the notice.</p> <p>16 The witness can testify in her</p> <p>17 individual capacity, not on behalf of</p> <p>18 Walmart, as to this particular</p> <p>19 question.</p> <p>20 THE WITNESS: So I know that</p> <p>21 there have been issues with controlled</p> <p>22 substances, diversion, and misuse over</p> <p>23 a period of -- a long period of time.</p> <p>24 Q. (BY MR. BOWER) And indeed,</p>	<p style="text-align: right;">Page 352</p> <p>1 THE WITNESS: Yes.</p> <p>2 Q. (BY MR. BOWER) Do you know how</p> <p>3 long Walmart has been a member of NACDS?</p> <p>4 A. My knowledge is that it has</p> <p>5 been at least since the early 2000s.</p> <p>6 Q. Okay. All right. So I just</p> <p>7 have a couple questions, then, on the</p> <p>8 language of the opinion here.</p> <p>9 If you could turn to page 2.</p> <p>10 I'm looking at the right-hand column there.</p> <p>11 The paragraph beginning "Whereas here."</p> <p>12 Do you see that?</p> <p>13 A. I see that.</p> <p>14 Q. About halfway there, the Court</p> <p>15 describes the reporting requirement.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. At the time of this</p> <p>19 opinion, was Walmart familiar with the</p> <p>20 reporting requirement?</p> <p>21 MS. TABACCHI: Object to the</p> <p>22 form. Beyond the scope.</p> <p>23 THE WITNESS: Our understanding</p> <p>24 was that we would -- in our policy,</p>
<p style="text-align: right;">Page 351</p> <p>1 would you disagree that Walmart has been in</p> <p>2 conferences and meetings where those issues</p> <p>3 were discussed over a long period of time?</p> <p>4 MS. TABACCHI: Object to the</p> <p>5 form. Beyond the scope.</p> <p>6 THE WITNESS: The time period,</p> <p>7 I don't know. Certainly we've</p> <p>8 attended meetings where opioid issues</p> <p>9 have been discussed.</p> <p>10 Q. (BY MR. BOWER) And you've</p> <p>11 attended meetings, for example, of the NACDS</p> <p>12 where opioid issues were discussed; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Have you attended other</p> <p>15 meetings where opioid issues were discussed?</p> <p>16 MS. TABACCHI: Is the "you" now</p> <p>17 Susanne Hiland?</p> <p>18 MR. BOWER: Yeah.</p> <p>19 THE WITNESS: Yes.</p> <p>20 Q. (BY MR. BOWER) And have folks</p> <p>21 from Walmart in addition to yourself attended</p> <p>22 meetings where opioids were discussed?</p> <p>23 MS. TABACCHI: Object to the</p> <p>24 form. Beyond the scope.</p>	<p style="text-align: right;">Page 353</p> <p>1 was that we would report orders deemed</p> <p>2 suspicious to the DEA.</p> <p>3 Q. (BY MR. BOWER) And at the time</p> <p>4 of this opinion, did Walmart's policies</p> <p>5 reflect that the reporting required was a</p> <p>6 relatively modest one?</p> <p>7 MS. TABACCHI: Object to the</p> <p>8 form. Beyond the scope of the notice.</p> <p>9 THE WITNESS: I don't know that</p> <p>10 we gauged the modesty of the</p> <p>11 requirement.</p> <p>12 Q. (BY MR. BOWER) Well, do you</p> <p>13 agree here that the Court is stating that the</p> <p>14 reporting requirement is a relatively modest</p> <p>15 one?</p> <p>16 MS. TABACCHI: Object to the</p> <p>17 form. Beyond the scope.</p> <p>18 THE WITNESS: I see that</p> <p>19 represented here.</p> <p>20 Q. (BY MR. BOWER) And, in fact,</p> <p>21 after Walmart saw this representation, it</p> <p>22 changed the way it reported its orders; is</p> <p>23 that correct?</p> <p>24 MS. TABACCHI: Object to the</p>

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1 form.
2 THE WITNESS: After the Masters
3 decision, we did begin reporting
4 orders of interest before we conducted
5 due diligence.
6 Q. (BY MR. BOWER) And Walmart
7 changed the way it reported its orders
8 because it hadn't been reflecting that the
9 reporting requirement was a relatively modest
10 one; isn't that correct?
11 MS. TABACCHI: Oh, object to
12 the form.
13 Could you please read that
14 back?
15 MR. BOWER: I'll rephrase.
16 Q. (BY MR. BOWER) After the
17 Masters decision came down, Walmart changed
18 the way it reported orders of controlled
19 substances because its prior program did not
20 reflect that the reporting requirement was a
21 modest one, did it?
22 MS. TABACCHI: Object to the
23 form. Beyond the scope.
24 THE WITNESS: We reported

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1 orders that were deemed suspicious,
2 which was -- was the process that we
3 had in place pre-Masters.
4 Q. (BY MR. BOWER) And what do you
5 mean by "deemed suspicious"?
6 A. After conducting due diligence
7 on an order of interest, if we could not
8 clear all red flags associated with that
9 order of interest, it was deemed suspicious
10 and then reported to the DEA and not shipped.
11 Q. So prior to Masters, in order
12 for an order to be reported to the DEA,
13 Walmart would have not cleared all red flags
14 in connection with that order; is that
15 correct?
16 MS. TABACCHI: Object to the
17 form.
18 THE WITNESS: That's not
19 correct. I think that's -- that's an
20 incorrect statement.
21 Q. (BY MR. BOWER) Okay. How would
22 you correct that statement?
23 A. The accurate statement is that
24 prior to Masters, Walmart would report orders

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1 that were identified as suspicious orders to
2 the DEA.
3 Q. And how would Walmart determine
4 whether an order was a suspicious order prior
5 to Masters?
6 MS. TABACCHI: Object to the
7 form. Asked and answered.
8 THE WITNESS: We would review
9 the orders of interest, conduct due
10 diligence on those orders of interest,
11 identify -- having identified red
12 flags that caused it to be an order of
13 interest, and -- and then, if those
14 red flags could not be satisfied, it
15 would be considered a suspicious
16 order, not shipped, and reported to
17 the DEA.
18 Q. (BY MR. BOWER) And indeed
19 those orders of interest that you were
20 reviewing were flagged, or otherwise
21 identified, because they were, for example,
22 of unusual size; isn't that correct?
23 MS. TABACCHI: Object to the
24 form. Beyond the scope.

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1 THE WITNESS: They may have
2 been flagged for the reason of size.
3 Q. (BY MR. BOWER) They were
4 flagged because they were unusual size.
5 Would you agree with that?
6 MS. TABACCHI: Object to the
7 form.
8 THE WITNESS: They may have
9 been flagged because they hit an
10 established threshold. And, in fact,
11 that threshold, as I testified
12 earlier, sometimes was adjusted
13 because that threshold was not an
14 unusual size. It was something that
15 was validated for that location, and
16 those -- and the threshold was then
17 adjusted because it was not unusual.
18 Q. (BY MR. BOWER) So is it your
19 testimony that if a threshold was not
20 adjusted and an order was flagged, that that
21 order would have been an unusual size?
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: No. I was just

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1 giving an example of the fact that the
2 threshold didn't -- didn't always
3 flag -- unusual size wasn't the reason
4 that the flag invoked in ...
5 MR. BOWER: Are you finished?
6 THE WITNESS: I am finished.
7 Q. (BY MR. BOWER) Prior to
8 Masters, Walmart has the Reddwerks thresholds
9 in place; correct?
10 A. Prior to Masters. Yes.
11 Q. Okay. And those thresholds at
12 least attempt to identify what would be a
13 usual order; correct?
14 MS. TABACCHI: Object to the
15 form.
16 THE WITNESS: Those thresholds
17 were based on history.
18 Q. (BY MR. BOWER) Right. And
19 therefore, when an order exceeded those
20 thresholds, Walmart would determine that
21 would be an unusual order. Agree or
22 disagree?
23 MS. TABACCHI: Object to the
24 form.

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1 THE WITNESS: It would flag an
2 alert, and we would then determine
3 whether or not that was unusual.
4 Q. (BY MR. BOWER) And it would
5 flag an alert because that order was an
6 unusual size. Agree or disagree?
7 MS. TABACCHI: Object to the
8 form.
9 THE WITNESS: It would flag the
10 alert so that we could determine if
11 the size was unusual.
12 Q. (BY MR. BOWER) Well, wouldn't,
13 at that point, Walmart be looking to whether
14 that unusual size was a valid order or not,
15 and not whether the size itself was unusual?
16 MS. TABACCHI: Object to the
17 form.
18 THE WITNESS: If I'm
19 understanding correctly, I believe
20 that's what we did.
21 MR. BOWER: Okay.
22 Q. (BY MR. BOWER) So let me just
23 clear that up a little bit, because I think
24 my question was a little bit kind of

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1 confusing.
2 At this point in time, let's
3 say prior to -- immediately prior to Masters.
4 Okay?
5 A. Okay.
6 Q. Walmart has thresholds in place
7 for controlled IIs at 6045; correct?
8 A. Correct.
9 Q. And those thresholds are
10 intended to reflect a usual order amount.
11 Would you agree with that?
12 MS. TABACCHI: Object to the
13 form.
14 THE WITNESS: Those thresholds
15 were based on a formulation that
16 was -- the basis for which was the
17 average order. So it was an average
18 and some deviation from that average.
19 Q. (BY MR. BOWER) Do you agree or
20 disagree that the thresholds that were in
21 place at this point were meant to reflect the
22 usual order amount?
23 MS. TABACCHI: Object to form.
24 Asked and answered.

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1 THE WITNESS: They were based
2 on order history and allowed for
3 variations within that order history.
4 Q. (BY MR. BOWER) And if those
5 variations were too large, then the order
6 would flag; correct?
7 MS. TABACCHI: Object to the
8 form.
9 THE WITNESS: The challenge is
10 that we also adjusted that maximum
11 order limit down to 50, so there -- so
12 the deviation was not the same for
13 every store and for every item. So
14 because we adjusted -- a deviation
15 based on that prior history might have
16 been above the 50 limit. We adjusted
17 that down.
18 And so in that case, we flagged
19 it so that we could do further
20 evaluation, is the point of the
21 threshold. It didn't always mean that
22 there was an unusual size. It was the
23 threshold engaged so we could
24 evaluate.

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1 Q. (BY MR. BOWER) So there's a lot
 2 there in that answer, but I don't think it's
 3 all in response to my question.
 4 MR. BOWER: So I'd move to
 5 strike that answer.
 6 Q. (BY MR. BOWER) But I also am
 7 now confused when you say you "order the
 8 limit down to 50." What does that mean?
 9 A. So I testified earlier in
 10 those -- the Reddwerks enhancement, as those
 11 thresholds were established, if -- if the
 12 weekly average plus three standard deviations
 13 exceeded 50, we adjusted that threshold down
 14 to 50. And so the way that that order --
 15 that subsequent order might flag could -- the
 16 reasons it flagged were different for each
 17 order, and for each store, and for each item.
 18 That's why it flagged so that we could
 19 evaluate whether or not it was an unusual
 20 order.
 21 Q. So my question was, what does
 22 an order limit of 50 mean? Okay? That's the
 23 question. Can you please answer that
 24 question?

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1 MS. TABACCHI: Asked and
 2 answered.
 3 THE WITNESS: The order limit
 4 of 50 was the threshold that was set
 5 to alert in the enhanced Reddwerks
 6 thresholds.
 7 Q. (BY MR. BOWER) So is it your
 8 testimony now that the enhanced Reddwerks had
 9 a threshold limit of 50?
 10 MS. TABACCHI: Object to the
 11 form. Misstates testimony.
 12 Q. (BY MR. BOWER) Well, your
 13 testimony is the order limit of 50 was the
 14 threshold that was set to alert in the
 15 enhanced Reddwerks thresholds. Is that an
 16 accurate statement?
 17 MS. TABACCHI: Object to the
 18 form. Misstates testimony.
 19 THE WITNESS: So the testimony
 20 that I gave -- and I'll clear up the
 21 50 reference -- is that I previously
 22 testified there was a maximum -- after
 23 all of the calculations were
 24 completed, there was a maximum

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1 threshold set. It was 5,000 units.
 2 So in this testimony, I extrapolated,
 3 because most of our products are
 4 100-count bottles. So that's what I
 5 was referring to in the maximum
 6 threshold that was set for advanced
 7 Reddwerks.
 8 Q. (BY MR. BOWER) So what happens
 9 if a store orders during this time period of
 10 the Reddwerks enhancements more than
 11 5,000 units?
 12 A. The order would flag. The
 13 order would be pended. We would evaluate
 14 that as an order of interest. It would start
 15 with the logistics team. If they could not
 16 clear the flags, it would go in the tiered
 17 process to the practice compliance team for
 18 additional assessment.
 19 Q. Is it your testimony that under
 20 the Reddwerks enhancements, an order would
 21 flag if it was only over 5,000 units per
 22 week?
 23 MS. TABACCHI: Object to the
 24 form. Misstates testimony.

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1 THE WITNESS: I understood you
 2 to ask what would happen if it hit the
 3 50 -- the 50 or the 5,000 dosage unit
 4 limit.
 5 Q. (BY MR. BOWER) What do you
 6 mean by "unit limit"? I don't understand
 7 what that means, "unit limit."
 8 MS. TABACCHI: Object to the
 9 form. Asked and answered.
 10 THE WITNESS: So items were
 11 available in different bottle sizes.
 12 So 100-count bottle would be
 13 100 units. There were items that came
 14 in 30-count bottles. And so units
 15 would be a function of how many dosage
 16 units were in the bottles and how many
 17 bottles were ordered.
 18 Q. (BY MR. BOWER) What was the
 19 minimum threshold under the Reddwerks
 20 enhancements for an item of controlled II
 21 substances to flag?
 22 MS. TABACCHI: Object to the
 23 form.
 24 THE WITNESS: For a traited

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1 item?

2 MR. BOWER: Yes.

3 THE WITNESS: The minimum --

4 this is confusing.

5 So the -- the highest threshold

6 that would be set -- the -- I'm going

7 to say highest and lowest. The

8 standard deviation calculation was

9 applied. The threshold that was set

10 would be 20 for a traited item.

11 If that order fell between --

12 if that calculation fell between the

13 20 and 50, then it would flag for

14 whatever that calculation was. If it

15 exceeded 50, it was lowered to 50.

16 Q. (BY MR. BOWER) Okay.

17 A. If I'm clear. I hope I'm

18 clear. It's a bit confusing.

19 Q. I understand now. Thank you.

20 So just so the record is clear,

21 then, the calculations are performed, and if

22 the -- if the result of those calculations

23 would give a threshold of greater than 50,

24 then that threshold is then reduced to 50; is

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1 that correct?

2 THE WITNESS: That is correct.

3 MR. BOWER: Thank you for that

4 clarification.

5 Q. (BY MR. BOWER) And in

6 connection with those thresholds that were

7 part of the Reddwerks enhancements, did

8 Walmart use any third parties to perform

9 those calculations?

10 MS. TABACCHI: Object to the

11 form.

12 THE WITNESS: We used a company

13 called Mu Sigma to validate those

14 calculations.

15 Q. (BY MR. BOWER) And what do you

16 mean by "validate those calculations"?

17 A. They're statisticians, so to

18 ensure that the thresholds and the

19 calculations, the data, that they were

20 applied correctly, that the calculation was

21 accurate and applied correctly.

22 Q. Did Walmart provide -- is it

23 Mu Sigma?

24 A. I think it's Mu Sigma.

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1 Q. Okay. Did Walmart provide

2 Mu Sigma instructions or anything similar to

3 that in connection with the Reddwerks

4 enhancements?

5 MS. TABACCHI: Object to the

6 form.

7 THE WITNESS: There were

8 communications about what we were

9 trying to accomplish in the request to

10 validate the data.

11 Q. (BY MR. BOWER) And did you

12 review those communications in preparation

13 for your deposition today?

14 A. I reviewed the exhibits related

15 to those calculations, yes.

16 Q. And are those in the binder you

17 brought with you today?

18 A. I don't -- I don't think

19 they're in the binder, but I will check.

20 Q. Okay. If they're not in there,

21 then --

22 A. Yeah.

23 Q. The binder will reflect what's

24 in there, I guess.

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1 A. I don't think they are.

2 Q. Do you recall anything about

3 what you reviewed in connection with those

4 calculations?

5 MS. TABACCHI: Object to the

6 form.

7 THE WITNESS: I reviewed the

8 fact that Kristy Spruell, in her role

9 as logistics compliance, calculated --

10 was working to develop enhancements to

11 the Reddwerks system. She relied on

12 the expertise of Roxy Reed.

13 And once the -- the formula or

14 concept was developed, it was

15 validated by Mu Sigma.

16 Q. (BY MR. BOWER) And what was

17 the concept that was developed that you're

18 referring to?

19 A. The average -- the weekly

20 average order plus three standard deviations.

21 Q. And how did Mu Sigma go about

22 validating that concept?

23 MS. TABACCHI: Object to the

24 form.

<p style="text-align: right;">Page 370</p> <p>1 THE WITNESS: They're data 2 experts. So we relied upon them for 3 their expertise. 4 Q. (BY MR. BOWER) And what do you 5 mean by "validated"? How would Walmart 6 consider that concept validated? 7 MS. TABACCHI: Object to the 8 form. 9 THE WITNESS: To take the data 10 and ensure that the assumptions that 11 we were making, based on the data, the 12 calculation was accurate. 13 Q. (BY MR. BOWER) And how did 14 Walmart determine that a minimum threshold of 15 20 would be appropriate for a traited item? 16 A. We were looking at -- again, as 17 we progressed through the order monitoring 18 program, we had been using 20 as a flag 19 previously where we were reviewing all 20 orders. And so these were progressions of 21 our process over time. 22 Q. And how did Walmart determine 23 that a maximum -- minimum/maximum of 50 was 24 an appropriate kind of maximum threshold?</p>	<p style="text-align: right;">Page 372</p> <p>1 controlled substances it expected to flag if 2 it set the minimum order to 20? 3 MS. TABACCHI: Object to the 4 form. Beyond the scope. 5 THE WITNESS: I know in 6 reviewing the documents of the 7 analysis that there were conversations 8 with Mu Sigma, and in Kristy Spruell's 9 deposition, there were documents 10 related to different standard 11 deviations and how alerts would -- how 12 many alerts might fire based on that 13 sample set of data. 14 Q. (BY MR. BOWER) And that sample 15 set of data informed Walmart's decision to 16 set a minimum threshold of 20. 17 Would you agree with that? 18 MS. TABACCHI: Object to the 19 form. 20 THE WITNESS: It was one of the 21 data points that was considered as 22 this process was being developed. 23 Q. (BY MR. BOWER) And did Walmart 24 do a similar analysis for the threshold of</p>
<p style="text-align: right;">Page 371</p> <p>1 MS. TABACCHI: Object to the 2 form. 3 Q. (BY MR. BOWER) That's a poor 4 question. 5 How would you describe that 50 6 threshold? 7 A. Again, because we had been 8 using 50 previously and were working through 9 those alerts, as the data came through and 10 there were thresholds over 50, we wanted to 11 make sure that we were still applying that 12 threshold that we had been working through. 13 Q. Did Walmart ever do an analysis 14 as to what -- strike that. 15 Did Walmart ever do an analysis 16 as to how many orders it expected to flag if 17 a minimum threshold had been set at 20? 18 MS. TABACCHI: Object to the 19 form. Beyond scope. 20 THE WITNESS: I'm sorry, I 21 think I missed the minimum 22 qualification. 23 Q. (BY MR. BOWER) Has Walmart ever 24 done an analysis as to how many orders of</p>	<p style="text-align: right;">Page 373</p> <p>1 50? 2 MS. TABACCHI: Object to the 3 form. 4 THE WITNESS: I think the 5 analysis was done across -- across the 6 deviations versus the alert, the exact 7 alert levels. 8 Q. (BY MR. BOWER) So prior to 9 setting these kind of threshold sizes, 10 Walmart had at least some idea as to the 11 number of alerts that those sizes would 12 trigger. 13 Would you agree with that? 14 MS. TABACCHI: Object to the 15 form. 16 THE WITNESS: We had -- we had 17 experience with the 50 threshold and 18 the review of orders that we already 19 had in place. And then we had -- we 20 had the over 20 report that had been 21 historically worked and had some view 22 of how many alerts were coming through 23 from that process. 24 Q. (BY MR. BOWER) Do you agree</p>

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1 that Walmart asked Mu Sigma to determine how
2 many alerts would be expected if it set a
3 minimum threshold of 20?
4 MS. TABACCHI: Object to the
5 form. Beyond scope.
6 THE WITNESS: I don't remember
7 that specific number in the documents
8 that I reviewed. I did review an
9 analysis of how the alerts would work
10 with Mu Sigma. I don't remember that
11 exact number.
12 Q. (BY MR. BOWER) Sorry, we got
13 sidetracked for a minute. Let's turn back to
14 Masters, if you would. Going to that second
15 paragraph we were on in the second page of
16 Masters?
17 A. Second page?
18 Q. Yes.
19 A. Okay.
20 Q. So we've talked about the
21 reporting requirement. I want to talk about
22 the next sentence where it states, "It
23 requires" -- now referring to the reporting
24 requirement -- "It requires only that a

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1 distributor provide basic information about
2 certain orders to the DEA so that DEA
3 investigators in the field can aggregate
4 reports for every point along the legally
5 regulated supply chain and use the
6 information to ferret out the potential
7 illegal activity."
8 Do you see that?
9 A. Yes.
10 Q. Did Walmart design its
11 suspicious order monitoring program to
12 provide this basic information to the DEA?
13 MS. TABACCHI: Object to the
14 form.
15 THE WITNESS: So after the
16 decision and we made changes to the
17 reporting of orders of interest, we
18 did -- we did report that information
19 before we conducted due diligence to
20 the DEA.
21 Q. (BY MR. BOWER) Is it Walmart's
22 position that the Masters decision changed
23 its obligations under the Controlled
24 Substances Act?

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1 MS. TABACCHI: Object to the
2 form. Calls for a legal conclusion.
3 It's beyond the scope of the notice.
4 And we have an order from Special
5 Master Cohen. We do not need to
6 answer that.
7 THE WITNESS: We changed our --
8 we changed the way that we were
9 reporting orders of interest post the
10 Masters decision in 2017.
11 Q. (BY MR. BOWER) Thank you.
12 If you could turn to page 4 of
13 the Masters opinion.
14 I'm looking on kind of the
15 right-hand column there. The paragraph
16 reading "In the record, evidence showed."
17 Do you see that?
18 A. I do.
19 Q. If you go kind of a little bit
20 down in that paragraph, the Court states that
21 "Masters' employees deleted held orders or
22 reduced their size so that they would no
23 longer trigger the hold."
24 Do you see that?

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1 A. I see that.
2 Q. Did Walmart's program, prior to
3 Masters, take into consideration that
4 reducing the size of an order in order to
5 ship the order and no longer trigger a hold
6 would be inappropriate?
7 MS. TABACCHI: Object to the
8 form. Beyond the scope of the notice.
9 I don't even understand what
10 you're asking.
11 Q. (BY MR. BOWER) Do you
12 understand what I'm asking?
13 A. Can you repeat?
14 Q. Sure.
15 Prior to Masters, did Walmart
16 have any policy and procedure in place that
17 would prevent an order from being reduced in
18 size and then shipped prior to due diligence
19 being performed?
20 MS. TABACCHI: Object to the
21 form.
22 THE WITNESS: I think there
23 were a couple of negatives in there.
24 So what -- our policies were designed

<p style="text-align: right;">Page 378</p> <p>1 to detect orders of interest. We 2 conducted due diligence. And if an 3 order was determined to be suspicious, 4 we did not ship and notified DEA. 5 Q. (BY MR. BOWER) So let me just 6 revamp my question because I think you may 7 have misunderstood my question. 8 My question is this: Prior to 9 Masters, did Walmart have any policy or 10 procedure in place that would prevent an 11 order from being reduced in size and then 12 shipped prior to due diligence being 13 performed? 14 MS. TABACCHI: Object to the 15 form. 16 THE WITNESS: That would 17 prevent an order from being ... 18 Our procedures in the 19 distribution center were specific to 20 oxycodone 30, and we did reduce 21 those -- we did reduce those orders. 22 Q. (BY MR. BOWER) Well, Walmart 23 didn't -- strike that. 24 Walmart's reduction of orders</p>	<p style="text-align: right;">Page 380</p> <p>1 those orders were entered in error? 2 A. Not every time. It would 3 depend on the response. And the associate 4 that was calling could escalate to 5 leadership, to asset protection. And again, 6 depending on, you know, what time 7 pre-Masters, logistics compliance or practice 8 compliance might be involved. 9 Q. In your preparation for today's 10 deposition, did you see any example of when a 11 Walmart associate called up a pharmacist and 12 then performed additional due diligence? 13 MS. TABACCHI: Object to the 14 form. 15 THE WITNESS: We have 16 documentation of phone conversations 17 with pharmacists and the due diligence 18 that occurred around orders that -- of 19 interest. 20 Q. (BY MR. BOWER) Okay. But my 21 question is a little bit different than that. 22 So in your preparation for 23 today's deposition, did you see any evidence 24 that Walmart associates who called up the</p>
<p style="text-align: right;">Page 379</p> <p>1 weren't limited to oxy 30, were they? 2 MS. TABACCHI: Object to the 3 form. 4 THE WITNESS: From a due 5 diligence perspective, we did perform 6 due diligence on other orders. 7 Q. (BY MR. BOWER) What about in 8 the circumstance where Walmart associated 9 with the DC calls up the pharmacist and the 10 pharmacist says they entered the order in 11 error? Those were reduced, weren't they? 12 MS. TABACCHI: Object to the 13 form. 14 THE WITNESS: Those were orders 15 of interest that were cleared and not 16 deemed suspicious. 17 Q. (BY MR. BOWER) Those were 18 reduced, weren't they? 19 MS. TABACCHI: Object to the 20 form. 21 THE WITNESS: Those orders were 22 errors that were corrected. 23 Q. (BY MR. BOWER) And did Walmart 24 rely on the pharmacists to determine whether</p>	<p style="text-align: right;">Page 381</p> <p>1 pharmacists would then conduct further due 2 diligence after speaking with the 3 pharmacists? 4 MS. TABACCHI: Object to the 5 form. 6 THE WITNESS: Yes. We have 7 documentation of our process of 8 reviewing orders, conversations with 9 pharmacists, and additional due 10 diligence. 11 Q. (BY MR. BOWER) Okay. What 12 documentation are you referring to? 13 A. We have "know your customer" 14 and follow-up forms. 15 Q. And when did Walmart first 16 implement its "know your customer" program? 17 MS. TABACCHI: Object to the 18 form. 19 THE WITNESS: It's a -- we've 20 known our customer. We know who our 21 customer is because we own these 22 pharmacies. And so over time as we've 23 developed our program, we did 24 formalize certain data points. But</p>

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1 from the period of time that we began
2 shipping, as I described, there were
3 collaborations between logistics and
4 other members of the corporate office
5 around knowing your customer.
6 Q. (BY MR. BOWER) When did
7 Walmart formalize its "know your customer"
8 program?
9 A. We began to formally document
10 with the Reddwerks enhancements.
11 Q. Going back to Masters for a
12 second in that same paragraph?
13 A. I'm sorry, I've already lost my
14 spot.
15 Q. Oh, sorry about that.
16 A. I'm here.
17 Q. It's page 4.
18 So after that sentence, the
19 Court goes on to say, "Simply accepting
20 whatever the pharmacist told them without
21 taking requisite steps to determine whether
22 explanations were accurate or even
23 plausible."
24 Do you see that?

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1 A. I see that.
2 Q. Does Walmart agree that that
3 policy or procedure would be inappropriate?
4 MS. TABACCHI: Object to the
5 form. Beyond the scope.
6 MR. BOWER: And I'll strike
7 that, because I understand the
8 objection.
9 Q. (BY MR. BOWER) Did Walmart take
10 that requirement, that accepting what
11 pharmacies told them, did Walmart take that
12 basic principle and implement it into its
13 suspicious order monitoring program?
14 MS. TABACCHI: Object to the
15 form.
16 THE WITNESS: This would be
17 part of a data -- this wouldn't be the
18 only data set that we were looking at
19 in performing due diligence. So -- so
20 a stand-alone word of the pharmacist
21 in that -- in the process of review of
22 orders of interest was -- did not
23 stand alone in this case.
24 Q. (BY MR. BOWER) If you'd turn

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1 to page 6 in the Masters decision.
2 Again, the right-hand column,
3 looking at the paragraph starting with
4 "Those," towards the top there? The first
5 full paragraph?
6 A. (Witness nods.)
7 Q. Do you see that?
8 A. Yes.
9 Q. Do you see the second sentence
10 in that paragraph, the Court states, "Most
11 strikingly, in lieu of reporting all held
12 orders, Masters employees deleted some and
13 edited others so that they appeared to be of
14 a normal size and pattern and then proceeded
15 to fill them."
16 Do you see that?
17 A. Yes.
18 Q. Did Walmart, at this point in
19 time, take that requirement in developing its
20 suspicious order monitoring programs?
21 MS. TABACCHI: Object to the
22 form.
23 THE WITNESS: I'm sorry, I was
24 reading the prior sentence.

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1 MR. BOWER: Sure.
2 THE WITNESS: Could you --
3 MR. BOWER: I'll rephrase.
4 THE WITNESS: Could I just for
5 one --
6 MR. BOWER: Oh, yes. Please.
7 THE WITNESS: -- refresh my
8 memory?
9 Okay. Thank you.
10 Q. (BY MR. BOWER) So at this point
11 in time, we're talking 2017. Right?
12 A. Yes.
13 Q. At this point in time, did
14 Walmart have any policies and procedures in
15 place that would prevent its own employees
16 from deleting orders or editing orders so
17 that they appeared to be of a normal size and
18 pattern and then filled them?
19 MS. TABACCHI: Object to the
20 form.
21 THE WITNESS: So in 2017, the
22 alerts that were coming through in the
23 enhanced Reddwerks were worked by the
24 logistics team and had to be cleared

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1 through that process.
2 And so the answer -- the answer
3 is we did not routinely cancel orders
4 in this -- in this manner that's
5 referred to in Masters.
6 Q. (BY MR. BOWER) So my question
7 is a little bit different, though. My
8 question is this: At this point in time, did
9 Walmart have any policies and procedures in
10 place that would prevent its own employees
11 from deleting orders or editing orders so
12 that they appeared to be of a normal size and
13 pattern and then fill those orders?
14 MS. TABACCHI: Object to the
15 form.
16 THE WITNESS: The process in
17 this case was Reddwerks alerts, and
18 those Reddwerks alerts could not be
19 deleted. The process was that that
20 alert had to be worked. So the policy
21 in that case led to further due
22 diligence.
23 Q. (BY MR. BOWER) And what
24 written policy are you referring to?

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1 A. So in 2017, the Bates number I
2 have is 969.
3 I don't know that you have --
4 Q. Is it tab 6 maybe?
5 A. Oh, I'm sorry. This
6 describes -- I've jumped ahead. This
7 describes our Buzzeo. But this was in place
8 in 2017.
9 Q. Okay.
10 A. I'm sorry, I just need to do a
11 fact check.
12 Q. Sure.
13 A. So in November of 2017,
14 actually this was in place. This was Buzzeo.
15 And those alerts were coming through the
16 system pre anyone in the logistics system
17 seeing those orders.
18 Q. Okay. And did Walmart have a
19 similar policy in place in 2010?
20 MS. TABACCHI: Object to the
21 form.
22 THE WITNESS: In 2010, we --
23 our associates were reviewing orders
24 as they came in, correcting errors if

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1 they were identified. If there was a
2 human error that was made, a mistake
3 that was made, that was in place in
4 2010.
5 Q. (BY MR. BOWER) So let's say in
6 2010, if a human error is made, what would
7 happen?
8 MS. TABACCHI: Object to the
9 form.
10 THE WITNESS: If an order was
11 identified that needed clarification,
12 that raised concerns, the DC
13 associate, logistics associate would
14 reach out to the pharmacy, understand
15 the reason for the error. If it was
16 reasonable, they would make a
17 correction and fill that order. If
18 they felt it wasn't reasonable, they
19 would reach out for follow-up to the
20 leadership that had responsibility for
21 those -- for that specific pharmacy.
22 Q. (BY MR. BOWER) So under this
23 policy, if the DC associates understood the
24 reason for the error, they would reduce the

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1 order and ship the order; is that correct?
2 MS. TABACCHI: Object to the
3 form.
4 THE WITNESS: If in their
5 assessment it was a reasonable order
6 and there was no other reason for
7 suspicion, yes.
8 Q. (BY MR. BOWER) And those
9 orders would not be reported to the DEA; is
10 that correct?
11 MS. TABACCHI: Object to the
12 form.
13 THE WITNESS: Errors that were
14 corrected were not reported to the
15 DEA.
16 Q. (BY MR. BOWER) Has Walmart
17 ever reported to the DEA prior to 2017 errors
18 that were corrected and then shipped?
19 MS. TABACCHI: Object to the
20 form.
21 THE WITNESS: To the extent it
22 was an order of interest that was
23 cleared and not deemed suspicious,
24 those were not reported before the

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1 Masters decision.
2 Q. (BY MR. BOWER) Okay. But I'm
3 asking a little bit different question. I'm
4 not asking if orders ever cleared and then
5 shipped. I'm asking specifically about
6 orders that were corrected and then shipped.
7 A. We would not have deemed those
8 as suspicious, and they would not have been
9 reported.
10 Q. So prior to Masters, Walmart
11 had at no time reported orders to the DEA
12 that were corrected and shipped; is that
13 correct?
14 MS. TABACCHI: Object to the
15 form.
16 THE WITNESS: In that scenario,
17 I'm not aware of that scenario.
18 Q. (BY MR. BOWER) If you'd turn
19 to page 9 of Masters.
20 Again, on the right-hand
21 column. Do you see the first -- I guess the
22 first full paragraph, the reference to the
23 shipping requirement?
24 A. On page 9?

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1 Q. Yeah, page 9, right-hand
2 column, first full paragraph starting in -- I
3 guess it's Pet'r Br. 46. That paragraph?
4 A. I see the paragraph.
5 Q. Do you see that?
6 So the second -- I think it's
7 the second full -- third full sentence.
8 States "As noted above, the shipping
9 requirement mandates that pharmaceutical
10 companies exercise due diligence before
11 shipping any suspicious order."
12 Do you see that?
13 A. Yes.
14 Q. Was that requirement reflected
15 in Walmart's suspicious order monitoring
16 policy at the time?
17 MS. TABACCHI: Object to the
18 form.
19 THE WITNESS: At the time of
20 the decision?
21 Q. (BY MR. BOWER) Yes.
22 A. Yes.
23 Q. Okay. And what written policy
24 reflected that -- the shipping requirement

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1 mandate?
2 A. The policy that -- let me get
3 the date correct.
4 The policy that was in place as
5 to December 2015, and, in fact, dating back
6 to January of 2015. It's in writing there,
7 as I go back and go through the various
8 policies.
9 Q. Can you just refer to -- when
10 you say "January of 2015, it's in writing
11 there," what are you specifically referring
12 to?
13 A. The policy -- the date of the
14 policy.
15 And so I'll refer you to the
16 earliest policy that references suspicious
17 order shipping is 8377, dated August 2014.
18 And that's on tab 7.
19 Q. Does Walmart have any written
20 policies in place prior to that date that
21 would reflect the shipping requirement?
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: We don't have a

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1 policy in writing.
2 (Whereupon, Deposition Exhibit
3 Walmart 11, September 2010 email
4 chain. Subj: RE: DEA Audit at DC
5 6013, WMT_MDL_000057259-57260, was
6 marked for identification.)
7 Q. (BY MR. BOWER) I've handed you
8 what's marked as Exhibit 11 to today's
9 deposition. The Bates number is 57259
10 through 60.
11 It's just a single email -- or
12 actually it's two emails. The rest is
13 redacted, and I'll note that those are
14 Walmart redactions. Just so you know. Okay?
15 A. Okay.
16 Q. Have you seen this document
17 before? Take a moment and review it and then
18 that will be my first question.
19 A. I saw this document, I believe
20 in one of the depositions as an exhibit.
21 Q. Okay.
22 You were also on this email;
23 correct?
24 A. Yes.

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1 Q. Do you recall receiving this
2 email in 2010?
3 A. I don't recall, but I don't
4 dispute it.
5 Q. Okay. This email reflects the
6 DEA audited a Walmart distribution center;
7 correct?
8 A. This is a -- this is a
9 distribution center of Walmart's, yes.
10 Q. In this email, Mr. Greer is
11 reporting on the DEA's expectations after an
12 audit at that distribution center.
13 Would you agree with that?
14 A. Yes.
15 Q. Okay. And he states that the
16 DEA -- he's writing to you. He writes,
17 Susanne. Right? That's you?
18 A. Yes.
19 Q. He writes, "The DEA expects the
20 DCs to have a more intimate relationship with
21 its customers."
22 Do you see that?
23 A. Yes.
24 Q. Okay. And then he writes,

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1 "They are looking for our due diligence in
2 dealing with excessive or suspicious orders."
3 Do you see that?
4 A. Yes.
5 Q. Okay. Previously when you
6 testified that the DEA had done audits at
7 Walmart's DCs and never raised a concern,
8 does this refresh your recollection that
9 concerns were in fact raised by the DEA?
10 MS. TABACCHI: Object to the
11 form.
12 THE WITNESS: I don't know that
13 it's in context. I -- I don't know
14 the full context of this or the
15 outcome of that audit. My
16 understanding has been that we've not
17 had an audit finding, and -- and so
18 this seems to be a conversation. It
19 could have been a clarification.
20 We made numerous clarifications
21 about our programs and processes to
22 the DEA over time. So I don't -- I
23 don't know what the context fully is
24 of this one excerpt.

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1 Q. (BY MR. BOWER) And I
2 understand your explanation but my question
3 was, again, a little bit different, going
4 back to your previous testimony where you
5 testified that the DEA had never raised
6 concerns about Walmart's suspicious order
7 monitoring policy at any of its audits.
8 Do you recall that testimony?
9 MS. TABACCHI: Objection, form.
10 THE WITNESS: I recall that
11 testimony.
12 Q. (BY MR. BOWER) would you agree
13 that this email, Exhibit 11, reflects DEA
14 raising at least some concerns regarding
15 Walmart's order monitoring policy for
16 controlled substances?
17 MS. TABACCHI: Object to the
18 form.
19 THE WITNESS: I agree that
20 they're talking about an improvement
21 that could be made to our program.
22 Q. (BY MR. BOWER) And as a result
23 of those conversations, folks at Walmart are
24 going to get together and figure out what a

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1 flag amount should be.
2 Do you agree with that?
3 A. I see that listed.
4 Q. And sometime thereafter,
5 Walmart then implements a flag amount. Would
6 you agree with that?
7 MS. TABACCHI: I'm going to ask
8 you to let the witness finish
9 answering.
10 MR. BOWER: Sorry. Sorry.
11 THE WITNESS: If there's a
12 question, I did not hear it.
13 Q. (BY MR. BOWER) Okay. And I
14 apologize if I cut you off. I'll do a better
15 job of letting you finish.
16 Would you agree that after this
17 date, Walmart then began instituting a flag
18 amount?
19 MS. TABACCHI: Object to the
20 form.
21 THE WITNESS: We did implement
22 flags in our system.
23 Q. (BY MR. BOWER) Prior to this,
24 you had not had flags in your system.

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1 Would you agree with that?
2 MS. TABACCHI: Object to the
3 form.
4 THE WITNESS: We did not have
5 flags programmed into our system.
6 Q. (BY MR. BOWER) The third
7 sentence of the email states that "Currently
8 we rely on the diversion team to run audits
9 and flag excessive purchases."
10 Do you see that?
11 A. Yes.
12 Q. During this time period, what
13 audits were being run by the diversion team
14 in connection with suspicious orders?
15 A. This would have been part of
16 the follow-up if there was an order that was
17 flagged. And the information -- this is the
18 process that passes the information to the
19 diversion control analyst, I believe was --
20 Q. And those were referred to as
21 audits?
22 A. It's reflected in our policy of
23 2010.
24 Q. Okay. Well that's not -- it

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1 doesn't seem to be consistent with what's
2 being written here because it says,
3 "Currently we rely on the diversion team to
4 run audits and flag excessive purchases."
5 Do you see that?
6 A. I see the way that he's phrased
7 it here.
8 Q. And it's your testimony that
9 that is inaccurate?
10 MS. TABACCHI: Object to the
11 form.
12 THE WITNESS: The process that
13 was in place, according to the policy,
14 was that we would send information for
15 flagged orders that could not be
16 resolved by the logistics team to the
17 diversion control coordinator, and
18 they would run an analysis.
19 Q. (BY MR. BOWER) That was --
20 there was no written policy in place at this
21 time; correct?
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: In 2010?

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1 Q. (BY MR. BOWER) Yes.
2 A. At this time?
3 We were memorializing the
4 policy that's reflected in November 2010,
5 does postdate this.
6 Q. So the answer to my question is
7 yes, there was no policy in place.
8 Would that be accurate?
9 A. At the time of this email there
10 was no written policy in place.
11 Q. Soon thereafter Walmart does
12 have a policy in place.
13 Would you agree with that?
14 MS. TABACCHI: Object to the
15 form.
16 THE WITNESS: Yes.
17 MS. TABACCHI: Object to the
18 form.
19 THE WITNESS: Yes.
20 Q. (BY MR. BOWER) Towards the end
21 of the email, Mr. Greer -- what was
22 Mr. Greer's position at the time?
23 A. He was asset protection manager
24 over the distribution centers.

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1 Q. Okay. So he would have been
2 one of the folks to flag those initial orders
3 as they're coming in; is that correct?
4 A. At this time he supervised
5 those -- he was in a supervisory role of all
6 of the DCs. Not -- at one point he was
7 physically in a DC in that role. In this
8 role he supervised those DC asset protection
9 associates.
10 Q. Okay. So during this time, he
11 wouldn't have seen an order unless someone
12 had escalated it to him; is that correct?
13 MS. TABACCHI: Object to the
14 form.
15 THE WITNESS: Correct.
16 Q. (BY MR. BOWER) And just a
17 couple more questions on this. Going to the
18 end of the email, Mr. Greer writes to Greg,
19 now, he says -- or writing about Greg, he
20 says, "Greg and I spoke and are in agreement
21 that we do not want to make the flag so high
22 that it does not trigger, but we do not want
23 to make it so low that it is flagging all the
24 time."

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1 Do you see that?

2 A. I see that.

3 Q. And, in fact, that was

4 Walmart's concern even in implementing the

5 Reddwerks enhancements; right? That they

6 didn't want the flag to be so low that it

7 would be flagging all the time?

8 MS. TABACCHI: Object to the

9 form.

10 THE WITNESS: I think this

11 reflects that we -- a desire to get

12 the flag right. It's saying we don't

13 want -- we don't want it to be an

14 outlier on either side. It's saying

15 we want it to be the right flag so

16 that we can detect orders and review

17 them appropriately.

18 Q. (BY MR. BOWER) And in getting

19 it right, Walmart didn't want the flag to

20 identify too many orders for review; correct?

21 MS. TABACCHI: Object to the

22 form.

23 THE WITNESS: We also did not

24 want it to alert too few orders

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1 either. It wouldn't have served its

2 purpose.

3 Q. (BY MR. BOWER) Right. Well,

4 did Walmart consider -- strike that.

5 Would you agree that, in

6 getting the amount of an order that would

7 flag right, as Mr. Greer writes, that Walmart

8 did not want to flag too many orders?

9 MS. TABACCHI: Object to the

10 form. Asked and answered.

11 THE WITNESS: That's one of the

12 considerations. It was not the only

13 consideration.

14 Q. (BY MR. BOWER) What were the

15 other considerations?

16 A. Not flagging too few of times.

17 Q. Okay. And by -- can you put a

18 more precise number on it what you mean by

19 "not flagging too few of times"? What would

20 be too few in your mind?

21 MS. TABACCHI: Object to the

22 form. Beyond scope.

23 MR. BOWER: I'll strike that.

24 Q. (BY MR. BOWER) What did Walmart

Page 404

1 consider to be too few?

2 MS. TABACCHI: Same objections.

3 THE WITNESS: It would be

4 something that didn't make sense for

5 the business. That we were reviewing

6 orders appropriately.

7 Again, the purpose of the

8 program is to detect, and so the

9 purpose -- not having enough alerts

10 would potentially impact our ability

11 to detect.

12 Q. (BY MR. BOWER) And I was with

13 you just to the end of that. So I just -- I

14 didn't follow the end of your statement where

15 you said, "Not having enough alerts would

16 potentially impact our ability to detect."

17 What does that mean?

18 A. If there was a suspicious

19 order.

20 Q. So if there's a suspicious

21 order but you don't have enough alerts, it

22 would impact your ability to detect that

23 order; correct?

24 MS. TABACCHI: Object to the

Page 405

1 form.

2 THE WITNESS: I'm giving a

3 hypothetical to say that in trying to

4 set the alert levels, the

5 considerations were let's try to get

6 the number right. If it alerts too

7 many, that's not ideal because you

8 would have false positives.

9 If it alerts too few, there may

10 be the opportunity for something to go

11 by unnoticed, and so we were -- the

12 intent of that comment is, let's get

13 it right.

14 Q. (BY MR. BOWER) And do you agree

15 that in attempting to get it right, Walmart

16 should have erred on the side of caution?

17 MS. TABACCHI: Object to the

18 form.

19 THE WITNESS: Well, I think we

20 have evidence of how along the process

21 we have improved our program, and the

22 example that I've testified to is the

23 advanced Reddwerks alerts would have

24 allowed for thresholds over 50 in

Page 406

1 specific cases. We took a
2 conservative view in that case and set
3 that threshold at 5,000 dosage units,
4 or 50 bottles for 100 count.
5 Q. (BY MR. BOWER) And would you
6 consider 50 to be a conservative threshold if
7 I told you that it wouldn't flag
8 99.99 percent of orders?
9 MS. TABACCHI: Object to the
10 form. Beyond the scope of the notice.
11 THE WITNESS: That wasn't the
12 only policy that we had in place. And
13 it was part of a broader program that
14 we had to be able to fulfill our
15 requirements.
16 MR. BOWER: I just-- I'll move
17 to strike that answer because I don't
18 think it was answering my question.
19 So I'll restate my question.
20 Q. (BY MR. BOWER) Would you
21 consider 50 to be a conservative threshold if
22 I told you that it wouldn't flag
23 99.99 percent of all orders?
24 MS. TABACCHI: Object to the

Page 407

1 form. Asked and answered.
2 THE WITNESS: I think you have
3 to consider the other parameters that
4 were in place. That in and of itself,
5 the 50 alert did not -- there were
6 always other elements in place.
7 Q. (BY MR. BOWER) Does Walmart
8 agree that it would be better to flag an
9 alert and review it as a potential false
10 positive than to ship an order that was
11 potentially suspicious?
12 MS. TABACCHI: Object to the
13 form.
14 THE WITNESS: Our intent was
15 never to ship an order that was deemed
16 suspicious.
17 Q. (BY MR. BOWER) Well, let me
18 ask you this. What would be worse, flagging
19 an order as a false positive or shipping a
20 suspicious order?
21 MS. TABACCHI: Object to the
22 form.
23 THE WITNESS: I think you have
24 to look at the circumstances. Our

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1 intent was never to ship a suspicious
2 order. However, I think that if
3 there's too many false positives, it
4 could lead to missing --
5 I think one could lead to the
6 other from an unintended consequence
7 perspective. That's why we were
8 working to get it right knowing that
9 neither situation was the ideal. And
10 that's why we continued to adjust and
11 improve and make modifications to our
12 program over a continuum of time.
13 MS. TABACCHI: Can we just take
14 a break when you come to a right
15 moment?
16 MR. BOWER: Sure. Go ahead.
17 THE VIDEOGRAPHER: 4:20. We
18 are off the video record.
19 (Recess taken, 4:20 p.m. to
20 4:43 p.m.)
21 THE VIDEOGRAPHER: 4:43. We
22 are on the video record.
23 Q. (BY MR. BOWER) All right.
24 We're back on the record. I just would ask

Page 409

1 you to pull out Exhibit 9 again, if you
2 would. I just have a couple of other
3 questions.
4 We looked at this earlier;
5 correct? In connection with Masters?
6 A. Yes.
7 Q. And I just have a couple of
8 additional questions on other topics on this
9 document. So if you'd look at the bottom
10 email, if you would, the email from
11 Ms. Johnson to Mr. -- how do you pronounce
12 his name? Tim --
13 A. Koch.
14 Q. Koch. Okay. The third bullet
15 point there under SOM. Do you see that? It
16 says, "Review past SOM evaluations that were
17 logistics team"?
18 Do you see that?
19 A. Yes.
20 Q. Did you talk with Ms. Johnson
21 about that work she performed in preparation
22 for today's deposition?
23 MS. TABACCHI: Object to the
24 form.

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1 THE WITNESS: Yes.
2 Q. (BY MR. BOWER) Do you have any
3 understanding -- or strike that.
4 What concerns was Ms. Johnson
5 referring to in this document regarding her
6 reviewing of past SOM evaluations?
7 MS. TABACCHI: Object to the
8 form. Beyond the scope.
9 THE WITNESS: I don't know what
10 the concerns were specifically
11 detailed in this document, but my
12 conversation with her was around the
13 process of auditing the work that was
14 done in evaluating orders.
15 Q. (BY MR. BOWER) And what did she
16 tell you about that process?
17 A. That there was a process, and
18 that she would go back and look at the work
19 and just evaluate the process, what was being
20 looked at. Just a checkup of the process,
21 and the documentation that was occurring.
22 Q. (BY MR. BOWER) And when did she
23 start that process?
24 MS. TABACCHI: Object to the

Page 411

1 form. Beyond the scope.
2 Q. (BY MR. BOWER) Well, now we're
3 talking about evaluating the SOM process;
4 correct?
5 A. This would be evaluating the
6 work that was done in evaluating orders.
7 Q. In fact, I believe your words
8 were, "My conversation with her was around
9 the process of auditing the work that was
10 done in evaluating orders"; right?
11 A. Yes.
12 Q. So when did Miranda begin that
13 work?
14 A. She -- from the -- from the
15 implementation of the multi-tiered approach,
16 she was looking at the work that was being
17 done to evaluate orders.
18 And so as this reflects,
19 September of 2015, that process had
20 transitioned from the logistics team -- was
21 in the process of transitioning into her
22 team. And so she was looking at the work
23 that was being done.
24 Q. Okay. And for what purpose was

Page 412

1 she looking at the work that had been done?
2 A. Just for consistency. There
3 were multiple people that were involved in
4 the process, and so she was looking for
5 consistency.
6 Q. Was she looking for ways to
7 improve the process?
8 A. I would say that's a -- as we
9 always have done. If she learned anything
10 that needed to be improved through that
11 review, that would be one of the outcomes.
12 Q. Do you know whether she learned
13 anything that needed to be improved through
14 her auditing of the SOM process?
15 MS. TABACCHI: Object to the
16 form.
17 THE WITNESS: I know that the
18 process continued to evolve, and
19 information was added to the way the
20 orders were reviewed.
21 What I do not know, if it was
22 in direct response to what she's
23 referring to in this email in
24 September of 2015.

Page 413

1 Q. (BY MR. BOWER) Okay. We're in
2 September of 2015. Right? This email?
3 A. Yes.
4 Q. When was the next point in time
5 that Walmart improved its review of orders of
6 interest?
7 MS. TABACCHI: Object to the
8 form.
9 MR. BOWER: I'll strike that.
10 Q. (BY MR. BOWER) After
11 September 21st, 2015, when was the next time
12 Walmart improved its suspicious order
13 monitoring program?
14 MS. TABACCHI: Object to the
15 form.
16 THE WITNESS: So there were
17 ongoing processes that were being
18 worked on, the most significant of
19 which was the switch from the
20 Reddwerks program to the Buzzeeo
21 program that occurred in 2017.
22 Q. (BY MR. BOWER) Before we get
23 to the switch to Buzzeeo in 2017, can you
24 provide any more specificity as to what you

Page 414

1 mean by "ongoing processes that were being
2 worked on"?

3 A. So the reviews that were
4 occurring of alerts that were firing in the
5 Reddwerks system. The documentation was
6 improved. The amount of information that was
7 being reviewed was considered. And so that
8 process was evolving as -- as Miranda was
9 standing up and developing that program.

10 Q. Okay. And let me just see if I
11 can put a finer point on a couple of those
12 things you mentioned.

13 When you say "the documentation
14 was improved," are you referring to
15 documentation in Archer?

16 MS. TABACCHI: Object to the
17 form.

18 THE WITNESS: Yes, we were
19 documenting the reviews in the Archer
20 system.

21 Q. (BY MR. BOWER) Sometime
22 after -- I lost my page. Sometime after
23 September of 2015, Walmart began documenting
24 its due diligence in Archer; is that correct?

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1 A. We were documenting before --
2 let me correct that. We were documenting the
3 review of the orders of interest in Archer
4 with the Reddwerks enhancement.

5 Q. So is it accurate, then, to say
6 that Walmart began documenting its review of
7 orders of interest in Archer on or about
8 August of 2015?

9 A. We were documenting those
10 reviews with that Reddwerks enhancement.
11 That was part of the enhancement that was
12 implemented.

13 Q. Let me try to get it a
14 different way.

15 When did Walmart first start
16 documenting its due diligence for orders of
17 interest in Archer?

18 A. That was in -- that was in the
19 2015 time frame.

20 Q. Can you put a finer point on
21 that than a 12-month period?

22 And again, just for the record,
23 you're referring to your binder that you
24 brought with you today?

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1 A. Yes.

2 MR. BOWER: And I will just
3 note that we were not provided a copy
4 of the binder. I'm not sure what's in
5 the binder, but we haven't reviewed
6 it. So we will keep the deposition
7 open pending any questions that are in
8 addition that we haven't asked and
9 that are included in the binder.

10 MS. TABACCHI: We obviously
11 have a different view, but we can
12 discuss that later.

13 THE WITNESS: Yes. In policy,
14 we state that we are retaining
15 documentation in the August 2014 time
16 frame.

17 Q. (BY MR. BOWER) Okay. So let me
18 just see if I can get a clear record on this,
19 then.

20 Did Walmart begin documenting
21 its due diligence reviews in Archer in August
22 of 2014?

23 A. There were -- the process that
24 was reviewed through the practice

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1 compliance -- this -- this documentation
2 evolved over time, and the documentation by
3 the practice compliance team was in the
4 Archer system.

5 Q. So -- and there's been some
6 confusion in the past depositions on this
7 issue too, so I think I need a clear answer
8 on this one.

9 When did Walmart first begin
10 documenting all orders of interest in Archer?

11 A. All -- if I can clarify.

12 Q. Please.

13 A. All of the information that was
14 associated with that order of interest, that
15 would be with the enhancement that occurred
16 in 2015. There was some documentation prior
17 to that, but it wasn't -- it wasn't the full
18 record.

19 Q. Okay. What was being
20 documented in Archer prior to that Reddwerks
21 enhancement in 2015?

22 A. The component that was
23 completed by the practice compliance team.

24 Q. Okay. So prior to the

Page 418

1 Reddwerks enhancement in 2015, an order of
2 interest would only be documented in Archer
3 if it was escalated to the practice
4 compliance team; is that correct?
5 A. That component, correct.
6 Q. And then after the Reddwerks
7 enhancements, is it true that Walmart began
8 documenting all reviews of flagged orders in
9 Archer?
10 A. There was a period of time when
11 there was a form that was mentioned. That
12 form was not used in those documents, were
13 placed into the Archer system.
14 Q. Okay. Can you just refer -- or
15 be more specific as to the form you're
16 referring to?
17 A. There was an order of interest
18 investigation form mentioned that -- for
19 clarity, that form was not used. That
20 information was documented in Archer.
21 Q. And that form is referenced in
22 one or more of Walmart's written policies; is
23 that correct?
24 MS. TABACCHI: Object to the

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1 form.
2 THE WITNESS: It was referenced
3 in an exhibit that was used in
4 Spruell. There was a link to a form
5 that's referenced there.
6 Q. (BY MR. BOWER) Okay. And in
7 its continued desire to improve its
8 suspicious order monitoring program, did
9 Walmart have occasion to meet with
10 manufacturers in connection with that
11 program?
12 MS. TABACCHI: Object to the
13 form. Beyond the scope.
14 THE WITNESS: I'm not aware of
15 a meeting with manufacturers specific
16 to our order monitoring program.
17 Q. (BY MR. BOWER) Okay.
18 (Whereupon, Deposition Exhibit
19 Walmart 12, February 2016 email chain.
20 Subj: FW: Areas of Focus - 2/16 -
21 2/19, WMT_MDL_ 000003906-3907, was
22 marked for identification.)
23 Q. (BY MR. BOWER) You've been
24 handed what's been marked as Exhibit 12 to

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1 today's deposition.
2 Take a moment and review that
3 document and let me know when you're
4 finished.
5 It's an email from Miranda
6 Johnson to George Chapman. Actually, it's
7 two emails. One's dated February 16, 2016,
8 and then a follow-up email dated February 19,
9 2016, providing updates.
10 Have you seen this document
11 before?
12 A. I have not.
13 Q. Have you had a chance to review
14 it?
15 A. I did review it.
16 Q. Is this something that you
17 talked with Ms. Johnson about in preparation
18 for today's deposition?
19 A. I did not talk to her about a
20 meeting with a manufacturer.
21 Q. Do you see her email to
22 Mr. Chapman there where she writes, "George,
23 here's my areas of focus this week"?
24 Do you see that?

Page 421

1 A. Yes.
2 Q. And she notes, "Meeting with
3 Purdue." Purdue is a manufacturer; correct?
4 A. Yes.
5 Q. A manufacturer of opioid
6 products; correct?
7 A. Yes.
8 Q. She notes that she's "Meeting
9 with Purdue on SOM programs."
10 Do you see that?
11 A. I see that.
12 Q. Did you ever inquire as to
13 Ms. Johnson whether her meeting with Purdue
14 on SOM programs helped Walmart in its efforts
15 to continuously improve those programs?
16 MS. TABACCHI: Object to the
17 form. Beyond the scope.
18 THE WITNESS: I did not speak
19 with her about a meeting with any
20 manufacturer.
21 Q. (BY MR. BOWER) Did you know
22 that Ms. Johnson notes that she had a great
23 meeting?
24 Do you see that?

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1 A. I see that in the email.
2 Q. And the meeting she's referring
3 to, it appears that she met with the director
4 of Purdue's SOM program.
5 Do you see that?
6 MR. TABACCHI: Same objections.
7 THE WITNESS: I see it in the
8 email.
9 Q. (BY MR. BOWER) And she notes
10 that she's -- that -- referring now to the
11 director of Purdue's SOM program, that "She
12 shared some interesting information with me
13 and prescribers."
14 Do you see that?
15 A. Yes.
16 Q. Do you know if Walmart ever
17 incorporated that research that it received
18 from Purdue into its own SOM program?
19 MR. TABACCHI: Objection,
20 beyond the scope.
21 THE WITNESS: Not that I'm
22 aware.
23 Q. (BY MR. BOWER) Do you know
24 whether it happened?

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1 MR. TABACCHI: Same objections.
2 THE WITNESS: So as -- as I
3 prepared for this deposition and
4 inquired as to who we partnered with,
5 we provided responses to -- to who we
6 were partnered with or who we relied
7 on -- the data that we used in our SOM
8 program.
9 MR. BOWER: Okay. So I move to
10 strike that answer as nonresponsive.
11 My question is very different than
12 that.
13 Q. (BY MR. BOWER) My question is
14 this. Do you know whether Walmart ever
15 included the interesting research that she
16 learned about from Purdue on prescribers in
17 its own SOM program?
18 MR. TABACCHI: Objection, form.
19 Beyond the scope.
20 THE WITNESS: So in my
21 research, my understanding is we did
22 not include data that was from a
23 manufacturer in our SOM program.
24 Q. (BY MR. BOWER) And why --

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1 what's the basis for that statement?
2 MR. TABACCHI: Same objections.
3 THE WITNESS: I met with
4 Roxy Reed and with Miranda Burris, and
5 we talked about the data that we were
6 using in our SOM program. And it --
7 there was no manufacturer mentioned as
8 we walked through the data that we
9 used in our program.
10 Q. (BY MR. BOWER) But you never
11 asked Ms. Johnson whether she included this
12 interesting research she got from Purdue on
13 prescribers in the SOM program; right?
14 MR. TABACCHI: Same objections.
15 THE WITNESS: I asked her what
16 data we were using and the source of
17 the data. She did not mention Purdue
18 in that discussion.
19 Q. (BY MR. BOWER) Okay. You
20 note -- she goes on to say, "We are going to
21 start a quarterly touch base to discuss ideas
22 on how to look at that."
23 Do you see that?
24 A. Yes.

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1 Q. Do you know whether Walmart
2 then continued to discuss ideas with Purdue
3 on how to look at data in connection with its
4 SOM program?
5 MR. TABACCHI: Objection,
6 beyond the scope.
7 THE WITNESS: I don't know
8 that.
9 Q. (BY MR. BOWER) Further down in
10 this email, Ms. Johnson notes that she
11 "reviewed reports from ABC McKesson that they
12 shared last week."
13 Do you see that?
14 A. Yes.
15 Q. And she notes that "Both
16 reports have some great information that I
17 think we can use."
18 Do you see that?
19 A. Yes.
20 Q. Did you talk with Ms. Johnson
21 about the use of reports from ABC and
22 McKesson in connection with Walmart's SOM
23 program?
24 MR. TABACCHI: Objection, form.

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1 Scope.

2 THE WITNESS: We talked about

3 the information that was available and

4 utilized from McKesson in our SOM

5 program. We didn't -- we did not

6 include the ABC information.

7 Q. (BY MR. BOWER) You didn't talk

8 with Ms. Johnson about the ABC information;

9 is that correct?

10 A. That is correct.

11 Q. Okay. And what information did

12 you talk about with respect to the

13 information that was available from McKesson?

14 A. The information that's reviewed

15 as McKesson purchases via pharmacy that's

16 being reviewed for an order of interest.

17 Q. And I'm just having a little

18 bit of trouble understanding that answer.

19 Your statement is that Walmart reviewed the

20 information that's reviewed as McKesson

21 purchases via pharmacy that's being reviewed

22 for an order of interest. Can you explain

23 what that means?

24 Let's just start over because

Page 427

1 it's a little bit confusing.

2 So let's go back to my original

3 question. What information did you talk

4 about with Miranda with respect to the

5 information that was available from McKesson?

6 A. So our discussion was around

7 the McKesson purchase data that was used as

8 part of our order monitoring program.

9 Q. And what is the McKesson

10 purchase data?

11 A. That would be information

12 related to opioids, controlled substances

13 that our pharmacies' purchase from McKesson.

14 Q. So that's information regarding

15 Walmart pharmacies purchases from McKesson;

16 is that correct?

17 A. That is correct.

18 Q. And prior to McKesson providing

19 that information, did Walmart consider its

20 own pharmacies' purchases from McKesson in

21 connection with its own SOM program?

22 MR. TABACCHI: Object to the

23 form.

24 THE WITNESS: Yes. The

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1 information that we were using was

2 available and had been used over a

3 period of time.

4 I don't believe it was tied to

5 this report that's referenced in the

6 email.

7 Q. (BY MR. BOWER) Okay. So when

8 did Walmart first consider information

9 regarding its pharmacies' purchases from

10 McKesson in connection with its own SOM

11 program?

12 A. That purchase information has

13 been available to us from the time that we

14 started to self-distribute.

15 Q. So is it a true statement that

16 Walmart always considered how much of a

17 product its pharmacies purchased from

18 McKesson in carrying out its own SOM program?

19 MR. TABACCHI: Object to the

20 form.

21 THE WITNESS: It wasn't always

22 a part of the review, but we --

23 that -- that data had been available

24 since the start of the program. And

Page 429

1 it was used in various ways, depending

2 on the nature of the review that was

3 being conducted.

4 Q. (BY MR. BOWER) Okay. So --

5 and I appreciate that clarification. So when

6 did the data information become part of the

7 review?

8 A. Some of the initial

9 incorporation would have been the process

10 that was implemented with the oxycodone 30

11 limits, as well as the over 20 report

12 reviews.

13 Q. (BY MR. BOWER) So, for

14 example, in those over 20 report reviews,

15 would Walmart include orders from McKesson in

16 reviewing those records?

17 A. There's a step in that process

18 that review -- that refers to purchase and

19 dispensing information. And that purchase

20 and dispensing information would be inclusive

21 of McKesson purchases.

22 Q. And, for example, this example

23 we're talking about, these over-20 reports,

24 would the pharmacies' purchases from McKesson

Page 430

1 be included when considering whether an order
2 exceeded a threshold of 20?
3 MR. TABACCHI: Objection, form.
4 THE WITNESS: Those purchases
5 weren't incorporated into our
6 thresholds.
7 Q. (BY MR. BOWER) But at some
8 point, Walmart decides to adopt the Buzzeo
9 system for its SOM program; correct?
10 A. Correct.
11 Q. And when did it first implement
12 Buzzeo at 6045?
13 A. At 6045 it was in late 2017.
14 (Whereupon, Deposition Exhibit
15 Walmart 13, March 2010 email chain.
16 Subj: Updated: Wal-mart Dendrite Conf.
17 Call-Mon. March 15 @ 11:00
18 Eastern/10:00 Central, WWMT_MDL_
19 000011558-11575, was marked for
20 identification.)
21 Q. (BY MR. BOWER) Okay. You've
22 been handed what's been marked Exhibit 13.
23 MR. BOWER: I will represent
24 that we have already seen this email.

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1 There were some concerns that it
2 wasn't a complete set. So we've now
3 provided the witness with a complete
4 set to resolve those concerns, because
5 I do have some more questions on this
6 email.
7 MR. TABACCHI: Is this a new
8 exhibit?
9 MR. BOWER: New exhibit, yep.
10 Exhibit 13.
11 MR. TABACCHI: Exhibit 13?
12 MR. BOWER: Yep.
13 Q. (BY MR. BOWER) Again, this is
14 the email from Dendrite, which later became
15 known as Buzzeo; correct?
16 MR. TABACCHI: Object to the
17 form.
18 THE WITNESS: That's my
19 understanding.
20 MR. TABACCHI: Beyond the
21 scope.
22 Q. (BY MR. BOWER) Take a moment,
23 review it. My first question is going to be,
24 you're the only one from Walmart on this

Page 432

1 email.
2 MR. TABACCHI: Object to the
3 form.
4 THE WITNESS: So Paula Barton
5 and Amanda Gorman are also from
6 Walmart.
7 Q. (BY MR. BOWER) Okay. Thank
8 you for that. What were their roles?
9 Take a moment to review that
10 and then ...
11 [Document review.]
12 A. I've reviewed.
13 Q. Okay. I appreciate you taking
14 the time to review it.
15 Do you recall receiving this
16 email in 2010?
17 A. I recall that we had
18 conversations with Cegedim.
19 Q. And do you recall participating
20 in this conference call with them on
21 March 15, 2010?
22 A. I'm sure I probably did. I
23 don't remember the specifics.
24 Q. Okay.

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1 Does this refresh your
2 recollection potentially that maybe Cegedim
3 was presenting an option for Walmart's SOM
4 program?
5 MR. TABACCHI: Objection,
6 beyond the scope.
7 THE WITNESS: There were --
8 what I recall is there were several
9 items that we were discussing included
10 as the suspicious order monitoring
11 module that they had.
12 Q. (BY MR. BOWER) Did Walmart
13 consider using that suspicious order
14 monitoring module in 2010?
15 MR. TABACCHI: Objection,
16 beyond the scope.
17 THE WITNESS: So we were
18 hearing the presentation, and so from
19 a consideration perspective, we were
20 looking at what they had to offer in
21 terms of this and other services that
22 they offered.
23 Q. (BY MR. BOWER) And during this
24 time period, Walmart didn't have any written

Page 434

1 policies in place in connection with its own
2 program; correct?
3 A. We did not have a written
4 policy at that time.
5 Q. And Walmart declined to go with
6 Buzzeo in 2010; correct?
7 MR. TABACCHI: Object to the
8 form.
9 THE WITNESS: We did not
10 proceed -- I don't know if we
11 declined. We did not proceed with, to
12 my knowledge, any of these services
13 that they discussed with us.
14 Q. (BY MR. BOWER) And then from
15 2010 up until 2017, Walmart took it upon
16 itself to enhance its SOM program; correct?
17 MR. TABACCHI: Object to the
18 form.
19 THE WITNESS: We made
20 enhancements to our program over time.
21 Q. (BY MR. BOWER) And then
22 finally, at the end of 2017, Walmart decides
23 to go with Buzzeo; right?
24 MS. TABACCHI: Object to the

Page 435

1 form.
2 THE WITNESS: We did implement
3 Buzzeo at the end of 2017.
4 Q. (BY MR. BOWER) And was the
5 implementation of Buzzeo improvement of
6 Walmart's SOM program?
7 MR. TABACCHI: Object to the
8 form.
9 THE WITNESS: It was a
10 continuous evolution and improvement
11 in the automation of orders in how
12 they were flagged.
13 Q. (BY MR. BOWER) Okay. And how,
14 if at all, did the change to Buzzeo impact
15 how orders of controlled substances were
16 flagged?
17 MR. TABACCHI: Object to the
18 form.
19 THE WITNESS: It specifically
20 sat ahead of the distribution system.
21 So an order was alerted -- an order
22 that was alerted came to the practice
23 compliance team before going to the
24 logistics team. So that was an

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1 improvement.
2 Additionally, there was an
3 algorithm applied that Buzzeo
4 determined to set those thresholds.
5 So those were the largest changes
6 around how the program worked.
7 Q. (BY MR. BOWER) And up until
8 you changed to Buzzeo, did Walmart still have
9 in place its minimum thresholds of 20 for
10 titrated [sic] items of controlled
11 substances?
12 MR. TABACCHI: Object to the
13 form.
14 THE WITNESS: We had the
15 enhanced thresholds still in place.
16 Q. (BY MR. BOWER) And those
17 enhanced thresholds provided for a minimum
18 threshold of 20 per store per item for the
19 titrated items; correct?
20 MR. TABACCHI: Object to the
21 form.
22 THE WITNESS: Titrated?
23 Q. (BY MR. BOWER) Traited. Sorry.
24 Did I say "titrated"?

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1 MR. TABACCHI: You did.
2 MR. BOWER: I apologize.
3 Traited items.
4 THE WITNESS: The -- for a
5 traited item, the threshold was 20 or
6 2,000 dosage units.
7 MR. BOWER: Okay.
8 (Whereupon, Deposition Exhibit
9 Walmart 14, 11-30-17 email from Roxy
10 Reed. Subj: DEA SOM reports,
11 WMT_MDL-000055271-55276, was marked
12 for identification.)
13 Q. (BY MR. BOWER) Would you agree
14 with me that when the change to Buzzeo was
15 made, more orders were flagged at Walmart?
16 MR. TABACCHI: Object to the
17 form.
18 THE WITNESS: There were more
19 orders that were flagged as orders of
20 interest for review and due diligence.
21 MR. BOWER: Okay. You've been
22 handed what's been marked as
23 Exhibit 14. Take a moment to review
24 it. Let me know when you're finished.

<p style="text-align: right;">Page 438</p> <p>1 [Document review.]</p> <p>2 Q. (BY MR. BOWER) Okay?</p> <p>3 A. Yes.</p> <p>4 Q. Have you seen this document in</p> <p>5 preparation for your deposition today?</p> <p>6 A. Yes.</p> <p>7 Q. And this is the letter from</p> <p>8 Walmart to the DEA reflecting the change in</p> <p>9 its SOM reporting in the wake of Masters;</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And I think we've</p> <p>13 already covered that, so I just want to ask a</p> <p>14 little bit about the actual report itself.</p> <p>15 Okay?</p> <p>16 Would these orders on this</p> <p>17 report have been flagged in the Buzzeo</p> <p>18 system?</p> <p>19 MR. TABACCHI: Object to the</p> <p>20 form.</p> <p>21 Q. (BY MR. BOWER) Well, I'll</p> <p>22 strike that. I'll take a step back in light</p> <p>23 of the objection.</p> <p>24 Do you see that the</p>	<p style="text-align: right;">Page 440</p> <p>1 some other indicator, the threshold</p> <p>2 in -- if there was some other</p> <p>3 indicator of an issue, the Reddwerks</p> <p>4 threshold was not set at this level.</p> <p>5 Q. (BY MR. BOWER) What do you mean</p> <p>6 by "some other indicator of an issue"?</p> <p>7 A. If for some reason -- again, we</p> <p>8 had associates who were monitoring orders.</p> <p>9 If there was --</p> <p>10 Q. Let me just read back my</p> <p>11 question so maybe we can move on. Okay? My</p> <p>12 question is only this.</p> <p>13 These orders reflected here</p> <p>14 would not have been flagged under the</p> <p>15 Reddwerks system. Correct?</p> <p>16 MS. TABACCHI: Zach, I'd</p> <p>17 appreciate it if you would not</p> <p>18 interrupt the witness.</p> <p>19 MR. BOWER: We all know we have</p> <p>20 limited time. The question she was</p> <p>21 answering was not the question that</p> <p>22 was pending, and so we need to move</p> <p>23 forward.</p> <p>24 MR. TABACCHI: It's</p>
<p style="text-align: right;">Page 439</p> <p>1 communication to the DEA attaches what</p> <p>2 Walmart describes as its list of orders that</p> <p>3 Walmart's SOM system has identified?</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And that list is</p> <p>7 attached; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Are those -- were those orders</p> <p>10 flagged by the Buzzeo algorithm?</p> <p>11 A. Yes. Yes, I believe this is</p> <p>12 the time.</p> <p>13 Q. So it appears, if you just look</p> <p>14 at a couple of examples here, that orders are</p> <p>15 being flagged, dosage units of 100; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Those are one bottle; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And those orders would have</p> <p>20 never been flagged under the Reddwerks</p> <p>21 system; correct?</p> <p>22 MR. TABACCHI: Object to the</p> <p>23 form.</p> <p>24 THE WITNESS: Unless there was</p>	<p style="text-align: right;">Page 441</p> <p>1 disrespectful.</p> <p>2 MR. BOWER: I'm not trying to</p> <p>3 be disrespectful. I'm just trying to</p> <p>4 focus --</p> <p>5 MS. TABACCHI: You are being</p> <p>6 disrespectful.</p> <p>7 MR. BOWER: I'm just trying to</p> <p>8 get her answers on the question that's</p> <p>9 pending.</p> <p>10 THE WITNESS: Some of these</p> <p>11 orders would not have flagged under</p> <p>12 the advanced Reddwerks. Some of them</p> <p>13 would have --</p> <p>14 Q. (BY MR. BOWER) Can you identify</p> <p>15 to us which --</p> <p>16 MR. TABACCHI: Again.</p> <p>17 MR. BOWER: I'm sorry. I</p> <p>18 thought you were finished. All right.</p> <p>19 Please finish.</p> <p>20 THE WITNESS: Some of them may</p> <p>21 have flagged.</p> <p>22 Q. (BY MR. BOWER) Okay. Can you</p> <p>23 identify for us, please, which orders you</p> <p>24 believe may have flagged under the Reddwerks</p>

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1 system?
2 MR. TABACCHI: Object to the
3 form. Beyond the scope.
4 THE WITNESS: I can't, because
5 I -- what I don't know is what the
6 deviation might have been from an
7 order that they had placed.
8 Q. (BY MR. BOWER) Well, I thought
9 we spent a lot of time today discussing
10 that the Reddwerks had a minimum threshold of
11 20 bottles which would be 2,000 dosage units.
12 Is that not correct?
13 MS. TABACCHI: Object to the
14 form.
15 THE WITNESS: Yes. As I was
16 looking through, I don't see anything
17 that's in a higher -- a 500-count
18 bottle. I see the doses now.
19 Q. (BY MR. BOWER) So would you
20 agree with me that none of the orders that
21 are reflected on Exhibit 14 would have been
22 flagged under the Reddwerks threshold system?
23 MR. TABACCHI: Object to the
24 form.

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1 THE WITNESS: That is correct.
2 Q. (BY MR. BOWER) And this says
3 October of 2017; correct?
4 A. Correct.
5 Q. Buzzeo is implemented, more
6 orders are being flagged; correct?
7 A. There are more orders of
8 interest being flagged for due diligence.
9 Q. This is approximately seven
10 years after Buzzeo first approaches Walmart
11 to work on its SOM program; correct?
12 MR. TABACCHI: Object to the
13 form.
14 THE WITNESS: It's seven years
15 after the presentation was made in
16 2010.
17 Q. (BY MR. BOWER) And a few
18 months later after this, Walmart decides to
19 stop distributing controlled substances;
20 correct?
21 MS. TABACCHI: Object to the
22 form. Beyond the scope.
23 THE WITNESS: We did stop
24 distributing C-IIs in April of 2018.

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1 Q. (BY MR. BOWER) Who made the
2 decision at Walmart to stop distributing
3 C-IIs?
4 MR. TABACCHI: Objection,
5 beyond the scope of the notice.
6 THE WITNESS: I don't know
7 exactly. It would have been the
8 leadership of health and wellness --
9 the leadership of health and wellness
10 at the time.
11 Q. (BY MR. BOWER) Were any
12 members of Walmart's board or any committees
13 of the board participants in that decision?
14 MR. TABACCHI: Object to the
15 form, beyond the scope of the notice.
16 THE WITNESS: I don't know the
17 board's involvement in the decision to
18 discontinue distribution.
19 Q. (BY MR. BOWER) Is it a fair
20 statement that that's not something you
21 prepared for to testify on today?
22 MR. TABACCHI: Object to the
23 form.
24 THE WITNESS: Can you clarify?

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1 MR. BOWER: Sure.
2 Q. (BY MR. BOWER) Do you know
3 whether anyone at the board level or any of
4 its committees was involved in the decision
5 to stop distributing controlled II
6 substances?
7 MR. TABACCHI: Objection,
8 beyond the scope.
9 THE WITNESS: I don't know the
10 extent that the board would have been
11 involved.
12 Q. (BY MR. BOWER) And --
13 A. In that decision.
14 Q. And just my -- I'm not trying
15 to be -- I'll strike that.
16 Is that something you prepared
17 to testify on today?
18 A. I did not prepare on the
19 board's knowledge of our discontinuation of
20 controlled substances.
21 Q. So as you sit here today, you
22 don't know one way or the other whether the
23 board had knowledge of that decision; is that
24 correct?

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1 A. I don't know whether the board
2 was -- I don't know that --
3 Q. Okay.
4 A. -- information.
5 Q. Are you familiar with anyone
6 who was involved in that decision?
7 MR. TABACCHI: Objection,
8 beyond the scope.
9 THE WITNESS: Yes.
10 Q. (BY MR. BOWER) Okay. And who
11 were those folks?
12 A. The person that I heard the
13 information from that was the head of Walmart
14 health and wellness was George Riedl.
15 Q. And how did you hear that
16 information?
17 A. It was in a meeting.
18 Q. Okay. Can we go back to
19 Exhibit 9 for a moment?
20 One -- I just want to clear up
21 one thing.
22 Do you have that in front of
23 you?
24 A. Exhibit 9, yes.

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1 Q. And I'm just using this to
2 maybe frame my questions regarding the
3 controlled substances advisory panel.
4 Do you see that reference in
5 the first email there from Miranda to
6 Tim Koch? The last bullet point and on the
7 second clear bullet point, she says, "Working
8 on outline on what she needs to research and
9 who so we can add this data to present at the
10 next CS advisory panel."
11 Do you see that?
12 A. Yes.
13 MR. TABACCHI: Objection,
14 beyond the scope.
15 Q. (BY MR. BOWER) And "CS
16 advisory panel" refers to controlled
17 substances advisory panel?
18 A. Yes.
19 Q. Under certain circumstances was
20 that panel involved in reviewing orders that
21 had been flagged?
22 MR. TABACCHI: Objection,
23 beyond the scope. I'm also going to
24 instruct the witness not to answer

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1 with respect to any communications
2 within the context of the controlled
3 substances advisory panel as
4 privileged.
5 MR. BOWER: Well, that -- that
6 panel made SOM decisions, so I think
7 I'm entitled to ask about it. Are you
8 going to -- so let's try to cut
9 through this.
10 Q. (BY MR. BOWER) Are you going
11 to refuse to answer questions on the
12 controlled substances advisory panel today?
13 A. To the extent that they're
14 privileged conversations, I could answer
15 general questions.
16 Q. Okay. Okay. So my question
17 that's pending is, under certain
18 circumstances, was the controlled substance
19 advisory panel involved in making decisions
20 of whether to ship orders of interest?
21 MR. TABACCHI: I'm just going
22 to caution the witness not to reveal
23 the substance of privileged
24 communications. If you can answer

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1 that question without discussing
2 privileged communications, you may.
3 THE WITNESS: So our policy
4 was -- and it's stated in policy,
5 that -- I'm trying to find it.
6 That the panel was involved in
7 oversight of the program. And if a
8 decision could not be made as to
9 whether an order was suspicious
10 between consultation with the director
11 of compliance and the head of
12 logistics, that order -- the process
13 was to bring that order before the
14 panel.
15 Q. (BY MR. BOWER) Okay. When was
16 the controlled substances advisory panel
17 first formed at Walmart?
18 MR. TABACCHI: Objection,
19 beyond the scope.
20 THE WITNESS: To the best of my
21 knowledge, it was sometime in 2014.
22 It may have been a little bit before
23 that.
24 Q. (BY MR. BOWER) And who -- who

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1 was on the panel when it was formed in 2014?
2 A. So the -- it would have been
3 compliance -- practice compliance associates,
4 logistics, asset protection, quality
5 improvement, and operations representatives,
6 as well as legal.
7 Q. And what was the purpose of the
8 panel?
9 MR. TABACCHI: Objection. To
10 the extent that the question calls for
11 you to reveal the substance of
12 attorney-client communications, I will
13 instruct you not to answer.
14 If you can answer without
15 revealing privileged communications,
16 you may.
17 THE WITNESS: One --
18 MR. TABACCHI: And if you are
19 unsure, we can -- we can discuss
20 whether there's a privilege issue. I
21 just don't know what ...
22 MR. BOWER: If you want to take
23 some time to discuss it, I'm happy to
24 give you that time.

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1 THE WITNESS: Could --
2 MR. TABACCHI: Do you want to
3 discuss it? The privilege issue?
4 THE WITNESS: Yes, please.
5 MR. TABACCHI: Okay.
6 THE VIDEOGRAPHER: 5:24. We
7 are off the video record.
8 (Recess taken, 5:24 p.m. to
9 5:34 p.m.)
10 THE VIDEOGRAPHER. 5:35. We
11 are on the video record
12 Q. (BY MR. BOWER) Okay. We're
13 back on the record, Ms. Hiland. I understand
14 you may be answering one of the questions I
15 asked earlier; is that correct?
16 A. Yes.
17 Q. Please go ahead.
18 A. So you asked me that question
19 as to the involvement in the Controlled
20 Substances Advisory Panel in making a
21 determination about whether or not an order
22 was suspicious. And I interviewed
23 Chad Ducote, Debbie Hodges, and
24 Miranda Burris, who all told me that, in

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1 following the policy and the stepped approach
2 of order review, none of the orders was ever
3 unresolved and therefore was not escalated to
4 the panel.
5 Q. Okay. Thank you for that.
6 What did the control
7 advisory -- Controlled Substance Advisory
8 Panel do?
9 A. The panel was charged with
10 reviewing certain programs, policies, that
11 related to substances with the advice and
12 guidance of counsel present.
13 Q. Did the panel review data
14 regarding controlled substances monitoring?
15 MR. TABACCHI: I'm going to
16 instruct the witness not to answer
17 with respect to the inner workings of
18 the controlled substances advisory
19 panel. Those communications are
20 privileged.
21 If you can answer the question
22 based on your interviews of Walmart
23 associates that were not privileged,
24 you may do that.

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1 THE WITNESS: I don't have any
2 information outside of the panel
3 activities that were privileged.
4 Q. (BY MR. BOWER) So, in other
5 words, you can't answer my question without
6 divulging what your attorney has deemed to be
7 attorney-client privileged information;
8 correct?
9 A. Yes.
10 Q. Did the panel make any
11 recommendations with respect to changes to
12 Walmart's controlled substance monitoring
13 program?
14 MR. TABACCHI: Object to the
15 form. And instruct the witness not to
16 reveal the substance of any privileged
17 communications. If you can answer
18 that with information that you have
19 that is not based on communications
20 with counsel, you may do that.
21 THE WITNESS: I wouldn't be
22 able to answer that without revealing
23 attorney-client-privileged
24 information.

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1 Q. (BY MR. BOWER) Did the
2 Controlled Substance Advisory Panel make a
3 recommendation to Walmart's board of
4 directors that Walmart should exit the
5 business of distributing controlled
6 substances?
7 MR. TABACCHI: I'm going to
8 instruct the witness not to answer the
9 question. It's beyond the scope of
10 the notice.
11 THE WITNESS: I won't be able
12 to answer that question.
13 Q. (BY MR. BOWER) Do you know
14 whether the controlled substances advisory
15 panel ever made an analysis of whether
16 Walmart should continue to distribute
17 controlled II substances?
18 MR. TABACCHI: I'm going to
19 instruct the witness not to answer the
20 question on the grounds that it's
21 protected by the attorney-client
22 privilege.
23 If you have information in
24 response to Mr. Bower's question based

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1 on your association with Walmart
2 associates that did not involve
3 communications with counsel, you may
4 answer.
5 THE WITNESS: I won't be able
6 to answer that question.
7 MR. BOWER: Why don't we take a
8 quick break. I don't have too much
9 time left on the record, so I can
10 prioritize the rest of my notes.
11 Okay?
12 THE VIDEOGRAPHER: 5:37. We
13 are off the video record.
14 (Recess taken, 5:37 p.m. to
15 5:57 p.m.)
16 THE VIDEOGRAPHER: 5:57. We
17 are on the video record.
18 THE WITNESS: If I could, could
19 I add some information to a prior
20 question that you asked me?
21 Q. (BY MR. BOWER) Your counsel
22 will have time to ask you questions at the
23 end, so I would ask that you save any
24 statements for questions from your counsel.

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1 Okay?
2 A. Okay.
3 Q. Unless it's -- is it something
4 that your memory has been refreshed over the
5 break?
6 A. It is information specific to
7 one of the exhibits.
8 Q. Okay. Well, I guess it's a
9 little bit unusual, but let's hear it.
10 A. So in -- as we were talking
11 about the exhibit that -- I'll have to find
12 it -- that showed our reporting post
13 Masters --
14 Q. Mm-hmm.
15 A. -- of orders of interest, where
16 we reported orders of interest prior to due
17 diligence to determine whether or not they
18 were suspicious?
19 Q. Okay.
20 A. We did report those to DEA.
21 And after that reporting, we had two
22 different DEA offices contact us and ask us
23 why we were reporting those and asked us to
24 stop reporting.

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1 Q. Okay. Thank you for that.
2 (Whereupon, Deposition Exhibit
3 Walmart 15, 6-21-16 email from Patsy
4 Little. Subj: Oxycodone marketing
5 plan, MNK-T1_0004830712, was marked
6 for identification.)
7 MR. BOWER: You've been handed
8 what's been marked as Exhibit 15.
9 MS. TABACCHI: Do you have a
10 copy for me?
11 MR. BOWER: Oh, sorry.
12 Q. (BY MR. BOWER) In preparation
13 for today's deposition, did you inquire
14 whether Walmart engaged in any marketing for
15 opioid products?
16 MS. TABACCHI: Objection,
17 beyond the scope.
18 THE WITNESS: I did read the
19 interrogatory and the response.
20 Q. (BY MR. BOWER) Okay. Did you
21 talk to Ms. Little regarding monitoring for
22 oxycodone?
23 MS. TABACCHI: Same objection.
24 THE WITNESS: I did not

<p style="text-align: right;">Page 458</p> <p>1 interview Patsy Little in my 2 preparation. 3 Q. (BY MR. BOWER) Okay. Do you 4 see Exhibit 15 is an email from Ms. Little to 5 folks at Mallinckrodt? Do you see that? 6 A. Yes. 7 Q. Mallinckrodt is a manufacturer 8 of oxycodone; correct? 9 MS. TABACCHI: Beyond the 10 scope. 11 THE WITNESS: Yes. 12 Q. (BY MR. BOWER) And Ms. Little's 13 inquiring about the oxycodone marketing plan; 14 correct? 15 MS. TABACCHI: Beyond the 16 scope. Objection, lack of foundation. 17 THE WITNESS: She's asking for 18 an outline. 19 Q. (BY MR. BOWER) Are you prepared 20 to testify today regarding whether Walmart 21 considering -- considered the marketing of 22 opioid products to physicians prior to 23 purchasing those products? 24 MS. TABACCHI: Objection,</p>	<p style="text-align: right;">Page 460</p> <p>1 Walmart 16, Chain Pharmacist Practice 2 Memo. Vol. 6/Number 9, 3 PKY181864224-PKY181864229, was marked 4 for identification.) 5 Q. (BY MR. BOWER) You've been 6 handed what's been marked as Exhibit 16 to 7 today's deposition. 8 Just for the record, this is a 9 Purdue document that was produced as 10 non-confidential. Bates number is 11 PKY181864224. And it's a chain pharmacist 12 practice memo from September 2002. 13 Have you ever seen anything 14 like this before, ma'am? 15 MS. TABACCHI: Object to the 16 form. Beyond the scope. 17 THE WITNESS: I've received 18 information -- I don't know if I've 19 received chain practice memo, but I 20 received communication from NACDS. 21 Q. (BY MR. BOWER) From time to 22 time, did NACDS provide chain pharmacist 23 practice memos to its members? 24 MS. TABACCHI: Object to the</p>
<p style="text-align: right;">Page 459</p> <p>1 beyond the scope. Object to the form. 2 THE WITNESS: My preparation 3 indicates that we did not participate 4 in marketing of opioids. 5 Q. (BY MR. BOWER) But my question 6 is a little bit different. Did Walmart 7 consider that, marketing plans that were 8 going to be implemented by manufacturers in 9 deciding whether to purchase opioid products? 10 MS. TABACCHI: Objection. 11 Object to the form, beyond the scope. 12 THE WITNESS: I don't have that 13 detail. 14 MR. BOWER: Okay. 15 Q. (BY MR. BOWER) Would you agree 16 with me that Walmart -- sorry, just give me a 17 second. 18 Would you agree with me that 19 Walmart was involved in NACDS going back to 20 the early 2000s? 21 A. Yes. 22 MS. TABACCHI: Object to the 23 form. 24 (Whereupon, Deposition Exhibit</p>	<p style="text-align: right;">Page 461</p> <p>1 form. 2 THE WITNESS: It appears to. 3 Q. (BY MR. BOWER) And would you 4 agree with me that, if Walmart had been a 5 member in 2002, that it would have 6 received -- likely received this memo? 7 MS. TABACCHI: Object to the 8 form. 9 THE WITNESS: As a member we 10 would have had access to 11 communication. 12 Q. (BY MR. BOWER) And I just have 13 a couple of questions on this memo, then. 14 Do you see it says "Special 15 Issue: Prescription Drug Misuse and Abuse." 16 Do you see that? 17 A. Yes. 18 Q. And do you see that it notes 19 that hydrocodone may be the most abused drug? 20 A. I see that. 21 Q. And then it goes on to mention 22 hydrocodone again kind of at the bottom, 23 right above the "Age and gender differences 24 in prescribing drug abuse trends."</p>

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1 Do you see right above that it
2 says, "Hydrocodone may be the most widely
3 misused opiate?"
4 Do you see that?
5 A. Yes.
6 Q. Okay. Would you agree with me
7 that if Walmart had received this document in
8 2002, it should have acted to do something
9 about hydrocodone abuse at that time?
10 MS. TABACCHI: Object to the
11 form. Beyond the scope. Lack of
12 foundation.
13 THE WITNESS: We had policies
14 in place related to the dispensing of
15 hydrocodone, and they were intended to
16 detect, prevent diversion across our
17 controlled substance obligations.
18 Q. (BY MR. BOWER) And what
19 policies did you have in place regarding the
20 dispensing of hydrocodone in 2002?
21 MS. TABACCHI: Objection,
22 beyond the scope.
23 THE WITNESS: The policies that
24 applied to our controlled substances

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1 would have applied -- would have been
2 inclusive of hydrocodone.
3 Q. (BY MR. BOWER) Do you see in
4 the next page it referenced opiophobia in the
5 bottom there? "Inappropriate pain management
6 and opiophobia"?
7 A. Yes, I see that.
8 Q. Have you ever heard that term
9 before?
10 MS. TABACCHI: Objection,
11 beyond the scope.
12 THE WITNESS: I don't believe I
13 have.
14 Q. (BY MR. BOWER) Do you
15 believe -- let me focus your attention on the
16 bottom of that box there. The last two
17 sentences say, "Most patients being
18 adequately treated for severe pain do not
19 abuse or become addicted to their
20 medications. One study found that only four
21 out of 12,000 patients given opioids for
22 acute pain become addicted."
23 Do you see that?
24 A. I see that here.

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1 Q. Do you believe that if Walmart
2 had distributed it to its pharmacists, that
3 it would have been accurate information?
4 MS. TABACCHI: Object to the
5 form. Beyond the scope of the notice.
6 Improper hypothetical. Lack of
7 foundation.
8 THE WITNESS: I don't see a
9 reference to the study, so I couldn't
10 verify the information.
11 Q. (BY MR. BOWER) As you sit here
12 today, do you believe that only four out of
13 12,000 patients given opioids for acute pain
14 management become addicted?
15 MS. TABACCHI: Object to the
16 form. Beyond the scope of the notice.
17 THE WITNESS: I don't know.
18 And I don't have a specific reference
19 to an addiction rate.
20 Q. (BY MR. BOWER) Well, it sounds
21 pretty low, doesn't it? Four out of 12,000?
22 Would you agree it sounds pretty low?
23 MS. TABACCHI: Object to the
24 form. Beyond the scope of the notice.

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1 THE WITNESS: That would be a
2 low number.
3 Q. (BY MR. BOWER) And would you
4 agree with me that, if this information had
5 been distributed to Walmart pharmacists, that
6 Walmart had an obligation to correct any
7 misleading information in this memo?
8 MS. TABACCHI: Object to the
9 form. Beyond the scope of the notice.
10 THE WITNESS: I don't know that
11 we would have correct -- to the extent
12 that it might have been counter to our
13 policy, we would restate policy. But
14 factual representations, I don't -- I
15 don't know that we would correct that
16 without having a reference to base any
17 correction on.
18 Q. (BY MR. BOWER) Did Walmart at
19 any point have any policies or procedures to
20 prevent opioid manufacturers from
21 communicating directly with its pharmacists?
22 MS. TABACCHI: Object to the
23 form. Beyond the scope of the notice.
24 THE WITNESS: The extent that I

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1 know about our relationship with drug
2 reps would be the way that I would
3 represent that.
4 Not specific to opioids. More
5 related to other products such as
6 immunizations. We have asked specific
7 manufacturers not to detail our
8 pharmacies and instead to work through
9 either someone at the home office or
10 even the regional manager so that
11 they're not actually out in the
12 stores.
13 Q. (BY MR. BOWER) Has Walmart
14 ever asked Purdue to stop communicating with
15 its pharmacists regarding opioid products?
16 MS. TABACCHI: Object to form.
17 Beyond the scope of the notice.
18 THE WITNESS: I don't know the
19 extent that that conversation would
20 have happened with Purdue.
21 Q. (BY MR. BOWER) Has Walmart
22 ever asked Mallinckrodt to stop communicating
23 with its pharmacists regarding opioid
24 products?

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1 MS. TABACCHI: Object to the
2 form. Beyond the scope of the notice.
3 THE WITNESS: I don't have that
4 information.
5 Q. (BY MR. BOWER) Has Walmart
6 ever looked for any correlation in dispensing
7 between opioids and opioid rescue drugs?
8 MS. TABACCHI: Object to the
9 form. Beyond the scope of the notice.
10 THE WITNESS: Not to my
11 knowledge.
12 Q. (BY MR. BOWER) Okay. Do you
13 think such information could have been
14 informative to developing Walmart's SOM
15 program?
16 MS. TABACCHI: Same objections.
17 THE WITNESS: I don't know what
18 the comparison would be, so -- so I'm
19 not sure how it would apply to our
20 duty to have policies and procedures
21 in place to detect suspicious orders.
22 I don't know if I'm making the
23 connection.
24 Q. (BY MR. BOWER) Does NACDS

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1 include in its membership opioid
2 manufacturers?
3 MS. TABACCHI: Object to the
4 form.
5 THE WITNESS: I believe there
6 is a category of membership for
7 suppliers. It's different than the
8 category of membership for pharmacy
9 members.
10 Q. (BY MR. BOWER) Okay. And do
11 you know whether Walmart has ever allowed any
12 opioid manufacturer to provide CLE programs
13 to its pharmacists?
14 MS. TABACCHI: Object to the
15 form, beyond the scope of the notice.
16 THE WITNESS: I don't know that
17 specifically.
18 Q. (BY MR. BOWER) Do you --
19 A. That there was a sponsored CE
20 program.
21 We use CE programs for our
22 pharmacists through pharmacist letter.
23 And -- and so generally that's what -- the
24 source of CE. That's Walmart provided. I

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1 don't have any information to anything other
2 than that.
3 Q. Okay. For example -- let me be
4 a little more specific. Are you aware of
5 whether Purdue has ever provided educational
6 programs to Walmart pharmacists regarding
7 OxyContin?
8 MS. TABACCHI: Object to the
9 form, beyond the scope of the notice.
10 THE WITNESS: Not that I
11 recall.
12 Q. (BY MR. BOWER) Are you
13 familiar with whether Purdue has ever
14 provided information to Walmart pharmacists
15 regarding opioid abuse?
16 MS. TABACCHI: Same objection.
17 THE WITNESS: Not that I recall
18 specifically.
19 Q. (BY MR. BOWER) Did you inquire
20 anything about that in preparation for today?
21 MS. TABACCHI: Objection,
22 beyond the scope.
23 THE WITNESS: I did not. I did
24 not.

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1 Q. (BY MR. BOWER) Okay. You
2 didn't inquire whether any manufacturers ever
3 provided any marketing materials to
4 pharmacists; is that correct?
5 MS. TABACCHI: Object to the
6 form. Beyond the scope of the notice.
7 THE WITNESS: No.
8 Q. (BY MR. BOWER) Okay. Are you
9 familiar with a civil enforcement action
10 brought against -- strike that.
11 Are you familiar with a civil
12 enforcement action brought against Walmart
13 pharmacies in the District of Texas regarding
14 violations of the CSA?
15 MS. TABACCHI: Object to the
16 form. Beyond the scope of the notice.
17 THE WITNESS: Could you -- I'm
18 sorry, I didn't mean --
19 MS. TABACCHI: No, I'm sorry.
20 Is there a -- I apologize. Is there a
21 plug?
22 MR. BOWER: Why don't we go off
23 the record.
24 THE VIDEOGRAPHER: 6:10 p.m.

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1 We are off the video record.
2 (Recess taken, 6:11 p.m. to
3 6:11 p.m.)
4 THE VIDEOGRAPHER: 6:11. We
5 are on the video record.
6 Q. (BY MR. BOWER) All right.
7 We're back on the record. And let me just
8 re-ask you the last question that was pending
9 before we went off.
10 Are you familiar with a civil
11 enforcement action brought against Walmart
12 pharmacies in the District of Texas regarding
13 violations of the CSA?
14 MS. TABACCHI: Object to the
15 form.
16 THE WITNESS: I believe so.
17 Can you orient me to date?
18 Q. (BY MR. BOWER) On or about
19 2006 or '7?
20 A. Yes.
21 Q. And what do you know about that
22 action?
23 MS. TABACCHI: Objection,
24 beyond the scope.

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1 THE WITNESS: I know that it
2 was specific to follow-up
3 investigation of five of our
4 pharmacies, and the -- the result was
5 found to be a violation of
6 recordkeeping -- a recordkeeping
7 violation, and specifically that
8 related to our pharmacy not having
9 invoices onsite. Walmart had the
10 invoices, but the receiving pharmacy
11 did not have invoices onsite. That
12 was the majority of the violation.
13 Q. (BY MR. BOWER) And so you would
14 agree with me, would you not, that the
15 federal government found that "Accountability
16 audits did not match the drugs on hand
17 revealing major overages and shortages in
18 accounting of controlled substances, and that
19 there were missing invoices for controlled
20 substances"?
21 MS. TABACCHI: Object to the
22 form. It's beyond the scope of the
23 notice. If you're going to read
24 something to the witness, please

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1 provide the document.
2 Q. (BY MR. BOWER) Would you agree
3 that the federal government made that finding
4 against Walmart?
5 MS. TABACCHI: Object to the
6 form, beyond the scope of the notice.
7 Same objection.
8 THE WITNESS: So I don't know
9 the language of the decision today.
10 But my understanding was -- and I was
11 involved in the audits. We accounted
12 for every tablet that was -- that was
13 identified in the audit. The DEA had
14 used a drug in the audit that was --
15 they were -- they were counting the
16 wrong drug and using the wrong audit
17 information.
18 And so I personally audited and
19 provided documents to the DEA,
20 balanced those accounts, and the
21 out -- the ultimate outcome was that
22 we had a pharmacy that was missing
23 multiple invoices.
24 That's my understanding.

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1 Without seeing the document, I -- my
2 understanding is different than the
3 detail that you've provided.
4 Q. (BY MR. BOWER) And your
5 understanding is that the DEA had essentially
6 had it wrong, and that you were able to
7 correct them. Is that accurate?
8 MS. TABACCHI: Object to the
9 form. Misstates the testimony.
10 THE WITNESS: I worked with the
11 DEA agent at the Houston field office
12 and provided them documentation. They
13 didn't -- they didn't accept all of
14 the documentation, but the
15 documentation was there, and it is a
16 fact that they counted the wrong drug.
17 Q. (BY MR. BOWER) And it's also a
18 fact --
19 A. In the audits.
20 Q. Sorry, I didn't mean to cut you
21 off. Do you want to finish?
22 A. I am done.
23 Q. Sorry about that.
24 It's also a fact, isn't it,

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1 that Walmart paid over \$600,000 to the
2 federal government in connection with that
3 investigation?
4 MS. TABACCHI: Object to the
5 form. Beyond the scope of the notice.
6 THE WITNESS: That's correct.
7 And it was -- it was a multiple of the
8 number of invoices that were missing.
9 Q. (BY MR. BOWER) How many
10 invoices were missing?
11 MS. TABACCHI: Same objections.
12 THE WITNESS: I'd have to go
13 back and count. But we had them. We
14 knew what -- what the finding entailed
15 specific to those invoices. I just
16 don't recall today.
17 Q. (BY MR. BOWER) You haven't
18 seen those documents in connection with this
19 case, have you?
20 MS. TABACCHI: Object to the
21 form.
22 THE WITNESS: I -- not in
23 12 years.
24 Q. (BY MR. BOWER) Okay. You

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1 didn't review them in preparing for your
2 deposition today; correct?
3 A. I did not prepare.
4 MR. BOWER: I know I'm running
5 short on time, but I want to try to
6 clear up one more thing on the record.
7 I'll note while you're reviewing this
8 document that I do have additional
9 questions on Walmart's SOM program and
10 other issues in addition to the issues
11 on the controlled substances advisory
12 panel. So we will be seeking more
13 time for this witness. I assume you
14 won't give us that time today; is that
15 correct?
16 MS. TABACCHI: You are correct.
17 (Whereupon, Deposition Exhibit
18 Walmart 17, August 2014 email chain.
19 Subj: SOM Reqs, WMT-MDL_000028599, was
20 marked for identification.)
21 MR. BOWER: I just thought we
22 might be able to cut it short and go
23 another hour.
24 MS. TABACCHI: I don't believe

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1 you're entitled to more time.
2 Q. (BY MR. BOWER) So you've been
3 handed what's marked as Exhibit 17. And we
4 spoke earlier about Walmart's ability to hold
5 an order while it was being evaluated.
6 Do you recall that?
7 A. Yes.
8 Q. Okay. And this is an email
9 from Ms. Spruell to Miranda Gan and Miranda
10 Johnson in 2014. Do you see that?
11 A. Yes.
12 Q. And Ms. Spruell writes that "It
13 is critical that we not ship any part of
14 suspicious orders so that the functionality
15 to hold an order pending evaluation is
16 absolutely required."
17 Do you see that?
18 A. I see that.
19 Q. Okay. Do you recall when
20 Walmart obtained the ability to hold an order
21 pending evaluation?
22 MS. TABACCHI: Object to the
23 form.
24 THE WITNESS: My understanding

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1 is that it was with the -- with the
2 Reddwerks enhancement.
3 Q. (BY MR. BOWER) And that would
4 have been entered by August 2015; correct?
5 A. That would be correct.
6 Q. Okay. So Kristy Spruell writes
7 this email to Miranda Gan and
8 Miranda Johnson, Ms. Sullins and Brian Wagner
9 in August of 2014; correct?
10 MS. TABACCHI: Object to the
11 form.
12 THE WITNESS: Yes, that's the
13 date on this.
14 Q. (BY MR. BOWER) And she notes
15 that "This functionality is critical."
16 Right?
17 MS. TABACCHI: Object to the
18 form. This is beyond the scope of the
19 notice, this document.
20 Q. (BY MR. BOWER) This document
21 just for the record is specifically related
22 to the SOM. Right?
23 MS. TABACCHI: It's
24 specifically related to DC 6001.

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1 Q. (BY MR. BOWER) And so my
2 question is, right, you've already testified
3 as to when Walmart first had this capability;
4 right? August 20th of '15.
5 MS. TABACCHI: Same objections.
6 THE WITNESS: This was a
7 systematic ability to hold the order.
8 MR. BOWER: Right.
9 THE WITNESS: The challenge
10 with the system had been how the
11 orders were pended and whether or not
12 the entire order had to be pended in
13 the previous Reddwerks system or
14 whether an individual order could be
15 broken out and pended.
16 And so that -- because
17 Miranda Gan was working on systems,
18 that's -- the questions are arising
19 out of how do we make that process.
20 How do we improve that process so that
21 the entire order doesn't have to be
22 pended.
23 Q. (BY MR. BOWER) Right. And
24 your previous testimony regarding when

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1 Walmart first had that capability would have
2 applied to DC 6045; correct?
3 MS. TABACCHI: Object to the
4 form.
5 THE WITNESS: Yes.
6 Q. (BY MR. BOWER) What are Buzzeo
7 algorithms?
8 A. It's a proprietary calculation
9 that Buzzeo provides in its service.
10 Q. Was Walmart able to provide
11 Buzzeo the information it requested in
12 developing those algorithms for Walmart?
13 MS. TABACCHI: Object to the
14 form.
15 THE WITNESS: I know that there
16 was communication around our ability
17 to -- they requested order
18 information. We didn't have the full
19 historical set of information. And so
20 we did provide what we had available
21 and then provided shipping data for
22 the full time frame that they were --
23 that they were interested in.
24 Q. (BY MR. BOWER) And what are

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1 Buzzeo's stress bars?
2 MS. TABACCHI: Object to the
3 form.
4 THE WITNESS: Those were -- to
5 my understanding in my interviews with
6 Miranda Johnson and Roxy Reed, those
7 were indicators about the alert that
8 was coming through the Buzzeo system.
9 Q. (BY MR. BOWER) Okay. And did
10 Buzzeo also have a numeric indicator for each
11 order that was communicated to Walmart?
12 MS. TABACCHI: Object to the
13 form.
14 THE WITNESS: There was a --
15 yes, there was a numeric indicator.
16 Q. (BY MR. BOWER) Was Walmart
17 involved in developing any of those
18 algorithms or indicators or did it rely on
19 Buzzeo for their development?
20 MS. TABACCHI: Object to the
21 form.
22 THE WITNESS: The way that I
23 understand it is the indicators were
24 developed by Buzzeo, and then the way

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1 that we utilized and reviewed those as
2 we were performing due diligence was
3 part of the program that we applied.
4 MS. TABACCHI: I would just
5 like to ask, are we out of time?
6 THE VIDEOGRAPHER: About a
7 minute.
8 MR. BOWER: We have a minute
9 left.
10 MS. TABACCHI: One minute. Go
11 ahead.
12 MR. BOWER: Are you going to
13 cut me off right at seven hours even
14 though we've made several statements
15 on the record that I objected to?
16 I'm just asking so I know.
17 MS. TABACCHI: We should
18 conclude the deposition when you're
19 out of time.
20 MR. BOWER: So I have more
21 questions, so I'm going to keep asking
22 until your counsel cuts me off, okay?
23 Q. (BY MR. BOWER) Would you agree
24 that Buzzeo was the first dynamic formula

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1 that applied to Walmart's orders of
2 substances?
3 MS. TABACCHI: Object to the
4 form.
5 THE WITNESS: I know it's been
6 described that way. The prior process
7 that looked at a 30 percent --
8 30 percent over the four-week average,
9 that changed -- those alerts in
10 Reddwerks changed. And then of course
11 we were adjusting, improving, making
12 changes to the programs.
13 So I believe we had movement,
14 and change over time. I think the
15 qualification of dynamic, it was a --
16 it was a robust system with the
17 algorithm that was applied.
18 MS. TABACCHI: I do believe
19 that the deposition -- that we're past
20 seven hours now; is that correct?
21 THE VIDEOGRAPHER: We are.
22 MR. BOWER: So I think you just
23 cut it off. She was finishing her
24 answer.

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1 MS. TABACCHI: I'm sorry. Were
2 you not finished?
3 THE WITNESS: I think I was.
4 MR. BOWER: Okay.
5 And I take it that you won't
6 let me ask any follow-up questions at
7 least on that question. Is that
8 correct?
9 MS. TABACCHI: I mean, I think
10 we're -- you know, you've chose to use
11 your time in the way that you've used
12 your time. You know, I don't know
13 what additional questions you have,
14 but, you know, we've been here for all
15 day. It's dark. It's -- you know,
16 it's almost 6:30.
17 MR. BOWER: This is a big
18 important case. We want to get to --
19 we need to get all of the facts out.
20 So we have more questions.
21 MS. TABACCHI: The witness has
22 been here all day for you, so I think
23 we'll take a break now and we'll be
24 back in a moment.

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1 MR. BOWER: So -- do you mean
2 for your questions or do you mean to
3 give me more time?
4 MS. TABACCHI: We're going to
5 go off the record and take a break and
6 we'll be back in a moment.
7 MR. BOWER: Okay. While we're
8 still on the record, do you have any
9 questions for this witness?
10 MS. TABACCHI: We'd like to
11 take a break, and then we will come
12 back.
13 MR. BOWER: So before you know
14 whether you're going to have
15 questions, you're going to take a
16 break; is that correct?
17 MS. TABACCHI: Correct.
18 THE VIDEOGRAPHER: 6:23. We
19 are off the video record.
20 (Recess taken, 6:22 p.m. to
21 6:25 p.m.)
22 MS. TABACCHI: We don't have to
23 go back on the record, because we
24 don't have any questions.

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1 We have no questions for this
 2 witness. So we can conclude for
 3 today.
 4 THE VIDEOGRAPHER: 6:26. We
 5 are on the video record.
 6 Any further questions?
 7 MS. TABACCHI: No. Thank you.
 8 THE VIDEOGRAPHER: 6:27. We
 9 are off the video record. This
 10 concludes the video deposition.
 11 (Proceedings recessed at 6:27
 12 p.m.)
 13 --o0o--
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1 CERTIFICATE
 2 I, DEBRA A. DIBBLE, Registered
 3 Diplomate Reporter, Certified Realtime
 4 Reporter, Certified Realtime Captioner,
 5 Certified Court Reporter and Notary Public,
 6 do hereby certify that prior to the
 7 commencement of the examination, Walmart
 8 30(b)(6), Witness Susanne Hiland, was duly
 9 sworn by me to testify to the truth, the
 10 whole truth and nothing but the truth.
 11 I DO FURTHER CERTIFY that the
 12 foregoing is a verbatim transcript of the
 13 testimony as taken stenographically by and
 14 before me at the time, place and on the date
 15 hereinbefore set forth, to the best of my
 16 ability.
 17 I DO FURTHER CERTIFY that pursuant
 18 to FRCP Rule 30, signature of the witness was
 19 not requested by the witness or other party
 20 before the conclusion of the deposition.
 21 I DO FURTHER CERTIFY that I am
 22 neither a relative nor employee nor attorney
 23 nor counsel of any of the parties to this
 24 action, and that I am neither a relative nor
 employee of such attorney or counsel, and
 that I am not financially interested in the
 action.
 DEBRA A. DIBBLE, RDR, CRR, CRC
 NCRA Registered Diplomate Reporter
 NCRA Certified Realtime Reporter
 Certified Court Reporter
 Dated: 22 January 2019

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1 INSTRUCTIONS TO WITNESS
 2
 3 Please read your deposition over
 4 carefully and make any necessary corrections.
 5 You should state the reason in the
 6 appropriate space on the errata sheet for any
 7 corrections that are made.
 8 After doing so, please sign the
 9 errata sheet and date it.
 10 You are signing same subject to
 11 the changes you have noted on the errata
 12 sheet, which will be attached to your
 13 deposition.
 14 It is imperative that you return
 15 the original errata sheet to the deposing
 16 attorney within thirty (30) days of receipt
 17 of the deposition transcript by you. If you
 18 fail to do so, the deposition transcript may
 19 be deemed to be accurate and may be used in
 20 court.
 21
 22
 23
 24

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1 ERRATA
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ACKNOWLEDGMENT OF DEPONENT

I, Walmart 30(b)(6) witness
Susanne Hiland, do hereby certify that I have
read the foregoing pages and that the same is
a correct transcription of the answers given
by me to the questions therein propounded,
except for the corrections or changes in form
or substance, if any, noted in the attached
Errata Sheet.

Susanne Hiland - Walmart 30(b)(6) DATE

Subscribed and sworn to before me this
____ day of _____, 20 _____.
My commission expires: _____

Notary Public

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LAWYER'S NOTES

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